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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

10 CFR Parts 600 and 1035

Financial Assistance Rules, Debarment and Suspension

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today is issuing a final rulemaking technical and conforming amendments to the Financial Assistance Rules, 10 CFR Part 600 and the Debarment and Suspension Rules, 10 CFR Part 1035. The current Debarment and Suspension Rule, 10 CFR Part 1035, provides DOE policies and procedures governing debarment and suspension actions for both procurement and nonprocurement. This coverage for nonprocurement is no longer needed because DOE has adopted the Governmentwide common rule for nonprocurement in 10 CFR Part 1036. Therefore, the purpose of this rulemaking is to delete the coverage in Part 1035 pertaining to nonprocurement as well as to make the conforming amendment to Part 600.

As a result of this rulemaking, DOE will have two separate rules governing debarment and suspension actions: Part 1035—Debarment and Suspension (Procurement) and Part 1036—Debarment and Suspension (Nonprocurement).

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT:

Cherlyn Seckinger, Procurement and Assistance, Management Directorate (MA–421), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9737

Carol A. Cowgill, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6902

SUPPLEMENTARY INFORMATION:

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I. Background

The DOE issued a final rule in the **Federal Register** of February 3, 1984 (49 FR 4318), which prescribed policies and procedures governing the debarment and suspension of organizations from participating in DOE procurement contracts and nonprocurement agreements. These rules not only implemented the Governmentwide rules of debarment and suspension for contracts and subcontracts contained in 48 CFR Subpart 9.4, but also established debarment and suspension procedures for DOE nonprocurement agreements and subagreements, including financial assistance awards and subawards. At that time, there were no Governmentwide debarment and suspension rules for nonprocurement transactions.

On May 26, 1988, the Governmentwide "common rule" for nonprocurement debarment and suspension actions was published in the **Federal Register** (53 FR 19169). DOE's implementation of this common rule was published in the **Federal Register** (53 FR 19171) on May 26, 1988, and will be codified in 10 CFR Part 1036. In the preamble of the common rule, DOE joined other agencies in giving interim final effect to the language in the proposed rule which excluded international transactions. The public was provided a 60-day period to comment on the interim final portion of the common rule. The public comment period ended on July 25 and no comments were received. In accordance with the Office of Management and Budget (OMB) Notice issued in the **Federal Register** on September 6, 1988 (53 FR 34474), the interim final portion of the common rule will remain in effect until the 27 Federal agencies simultaneously issue the next rulemaking.

Because of the issuance of 10 CFR Part 1036, today's rulemaking amends 10 CFR Part 1035 to apply only to procurement contracts, including sales contracts and real property purchase agreements.

II. Conforming Amendments

In Part 600, § 600.27 is amended by conforming the reference to Part 1036.

In Part 1035, §§ 1035.1, 1035.2, 1035.4, and 1035.15 are amended to conform to 10 CFR Part 1036.

In §§ 1035.1 and 1035.2 the scope and applicability of Part 1035 have been amended to delete references to the nonprocurement transactions which are governed by the debarment and suspension procedures in 10 CFR Part 1036.

In § 1035.4 the definitions for "Agreement" and "Subagreement" have been revised by deleting the references to nonprocurement transactions. The definition for "DOE list" now includes a reference to 10 CFR 1036.610 which governs the listing of nonprocurement awardees that have been debarred or suspended by DOE.

Section 1035.15 is amended by adding a reference to Part 1036.

Appendix A of Part 1035 is also revised to add references to appropriate sections in Part 1036.

III. Review Under Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects.

We do not believe that this regulation will have an annual economic impact of $100 million or more on the other effects listed in the order. For this reason, we have determined that this regulation is not a major rule within the meaning of the order.

IV. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities", an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

We certify that this regulation will not have a significant economic impact on a substantial number of small entities.

V. Review Under the Paperwork Reduction Act

We certify that this rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

VI. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1506), and the DOE rule (10 CFR Part 1021) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 10 CFR Parts 600 and 1035

Administrative practice and procedure, Reporting and recordkeeping requirements, Suspension and debarment.

For the reasons set out in the preamble, Title 10, Parts 600 and 1035, of the Code of Federal Regulations are amended as set forth below:

Issued in Washington, DC.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599, (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6300), unless otherwise noted.

§ 600.27 [Amended]

2. Section 600.27 is amended by revising the reference to "10 CFR Part 1035" to read "10 CFR Part 1036."

PART 1035—DEBARMENT AND SUSPENSION (PROCUREMENT)

3. The title of Part 1035 is revised to read as set out above:

4. The authority citation for Part 1035 continues to read as follows:

Authority: Secs. 307, 644, and 646 Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7156, 7254, and 7256); and Federal Acquisition Regulation, 48 CFR Subpart 9.4.

5. Part 1035 is further amended as set forth below:

a. Paragraph (a) of § 1035.1 is revised to read as follows:

§ 1035.1 Scope of part.

* * * * *

(a) Prescribes policies and procedures governing the debarment and suspension of organizations and individuals from participating in Department of Energy (DOE) contracts, procurement sales contracts, and real property purchase agreements, and from participating in DOE approved subagreements (including DOE approved subcontracts).

* * * * *

b. Section 1035.2 is revised to read as follows:

§ 1035.2 Applicability.

The provisions of this part apply to all procurement debarment and suspension actions initiated by DOE on or after the effective date of this part. Nonprocurement debarment and suspension rules are codified in 10 CFR Part 1036.

c. Section 1035.4 is amended by revising the definitions of "Agreement," "DOE List" and "Subagreement" to read as follows:

§ 1035.4 Definitions.

* * * * *

"Agreement" means a procurement or sales contract or a real property purchase agreement.

* * * * *

"DOE List" means the DOE Consolidated List of Debarred, Suspended, Ineligible and Voluntarily Excluded Awardees maintained by DOE in accordance with § 1035.15 of this part and 10 CFR 1036.610.

* * * * *

"Subagreement" means an agreement under an agreement (e.g., a subcontract).

* * * * *

§ 1035.15 [Amended]

d. Section 1035.15 is amended by adding the words "and 10 CFR Part 1036" to the end of the first sentence.

Appendix A—Rules for Fact-Finding Conferences

6. Section 1 of the Preface is revised to read as follows:

1. Scope

These rules are issued pursuant to the Department of Energy rules governing debarment and suspension (the DOE Rules), 10 CFR Part 1035, Debarment and Suspension (Procurement), specifically 1035.8(d)(4) and 10 CFR Part 1036 Debarment and Suspension (Nonprocurement), specifically 1036.600(d)(4). These rules establish procedures for the conduct of factfinding conferences held pursuant to 10 CFR 1035.8 and 1036.600.

7. Section 3 of the Preface is amended as follows:

a. In paragraph (a) after the reference to "§ 1035.4" add "and § 1036.105"; and after the reference to "§ 1035.8(a)" add "and § 1036.600(a)."

b. Paragraph (b)(2) is revised to read as follows:

3. Definition

* * * * *

(b) * * *

(2) *DOE Rules:* The DOE regulations at 10 CFR Part 1035, Suspension and Debarment (Procurement), and 10 CFR Part 1036, Suspension and Debarment (Nonprocurement). Reference to "§ 1035." or "§ 1036." refers to sections of the DOE Rules.

* * * * *

8. Rule 1 is amended as follows:

a. In paragraph (a) add "or §1036.600, as applicable," after "§1035.8."

b. In paragraph (b)(1) add ", §1036.312, or § 1036.411, as applicable," after "§ 1035.6."

c. In paragraph (b)(2) add "or §1036.600(c), as applicable," after "1035.8(c)" and add "or § 1036.600(c)(3), as applicable," after "§1035.8(c)(3)."

9. Rule 2 is amended as follows:

a. In the introductory paragraph add "or § 1036.600(c), as applicable," after "§ 1035.8(c)" wherever the latter reference appears.

b. In paragraph (a) add "or § 1036.600(c)(3), as applicable," after "§ 1035.8(c)(3)."

10. Rule 4(c) is amended by adding "or § 1036.600(c), as applicable," after "§ 1035.8(c)" and "or § 1036.600(c)(3), as applicable," after "§ 1035.8(c)(3)."

11. Rule 9 is amended by adding "or § 1036.605, as applicable," after "§ 1035.7" wherever the latter reference appears.

12. Rule 14 is amended by adding "or § 1036.600(d)(7), as applicable," after "§ 1035.8(d)(7)."

13. Rule 15 is amended as follows:

a. In paragraph (b)(1) add "or §1036.600(d)(6) as applicable," after "§ 1035.8(d)(6)."

b. In paragraph (d) add "or §1036.605, as applicable," after "§ 1035.7."

c. In paragraph (e) add "and §1036.600(d)(7)" after "§1035.8(d)(7)."

14. In Rule 20(c), add "§ 1036.320 or §1036.415, as applicable," after "§ 1035.11(c)."

15. Rule 22 is amended as follows:

a. In paragraph (a)(2)(iii) add "or § 1036.600(c), as applicable," after "§ 1035.8(c)."

b. In paragraph (a)(8) add "or §1036.605, as applicable," after "§ 1035.7."

16. The introductory paragraph of Rule 24 is amended by adding "or § 1036.320(c), as applicable," after "§ 1035.11(c)" wherever it appears.

[FR Doc. 88-22893 Filed 9-30-88; 3:16 pm]
BILLING CODE 6450-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

Amendment to Standards of Conduct Regulations

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the Small Business Administration (SBA) Standards of Conduct Regulations to conform with a government-wide policy regarding exceptions to the prohibition of acceptance of food and refreshments by Executive Branch Employees from prohibited sources.

EFFECTIVE DATE: October 4, 1988.

FOR FURTHER INFORMATION CONTACT: Michael F. Kinkead, (202) 653-6381.

SUPPLEMENTARY INFORMATION: On June 30, 1988, SBA published in the Federal Register (53 FR 24727) a notice of proposed rulemaking implementing a memorandum of October 23, 1987 issued by the Office of Government Ethics. The memorandum reiterated that Office's longstanding interpretation of E.O. 11222 and Part 735 of Title 5, CFR, which prohibits the acceptance of free food and refreshment when provided by prohibited sources. The memorandum notes that subsection 201(b) of Executive Order 11222 recognizes that individual agencies may need to provide for certain exceptions to the broad restriction, subject to Office of Government Ethics approval.

During the 30-day comment period, SBA received only one comment and this related to a typographical error which has been corrected.

Compliance With Executive Order 12291, the Regulatory Flexibility Act and the Paperwork Reduction Act

This final rule is solely related to agency personnel and, therefore, is exempted from the coverage of Executive Order 12291. E.O. 12291 section 1(a)(3). In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this final rule will not have a significant economic effect on a substantial number of small entities because it relates solely to agency personnel. Finally, this final rule will impose no new reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

The following exceptions to this government-wide policy have been approved by the Office of Government Ethics, and are hereby issued as a final rule.

List of Subjects in 13 CFR Part 105

Standards of conduct.

Accordingly, SBA amends Part 105, title 13, CFR as follows:

PART 105—[AMENDED]

1. The authority citation continues to read as follows:

Authority: Sec. 5, 72 Stat. 385 (15 U.S.C. 634); E.O. 11222; 3 CFR 1964-65 Comp.; 5 CFR 735.104.

2. Section 105.503(a)(1) is revised to read as follows:

§ 105.503 [Amended]

(a) * * *

(1) Has, or is seeking to obtain directly or as the representative of another, any contractual or other business or financial relations with SBA or any SBA Assistance.

* * * * *

3. Section 105.503(b)(2) is revised to read:

* * * * *

(b) * * *

(2) The acceptance of food and refreshments of nominal value when:

(i) On infrequent occasions they are provided in the ordinary course of a luncheon or dinner business meeting or other business meeting or on an inspection tour where an employee may properly be in attendance; or

(ii) It is in SBA's interest that an employee attend an event, such as a reception, seminar, conference, or training session, where food or refreshments are being served, provided that, the event is expected to be widely attended and of mutual interest to the Government and the private sector; the food and refreshments offered are not excessive; and the employee obtains prior approval from his immediate supervisor, or in the case of Agency management officials, prior approval from the appropriate Agency Ethics Official. However, where the sponsor of the event is an individual or entity that is directly involved in a matter or matters presently before SBA or otherwise regulated by SBA, the approving official must also determine that the timing of the event or other circumstances surrounding the event do not create a real or apparent conflict of interest.

* * * * *

Dated: September 27, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-22700 Filed 10-3-88; 8:45 am]
BILLING CODE 8025-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3233]

The Vons Companies, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, that The Vons Companies, an El Monte, Ca. corporation, divest certain Safeway stores in the California area.

DATE: Complaint and Order issued August 29, 1988.[1]

FOR FURTHER INFORMATION CONTACT: Joan S. Greenbaum, FTC/S-3302, Washington, DC 20580. (202) 326-2629.

SUPPLEMENTARY INFORMATION: On Thursday, June 2, 1988, there was published in the Federal Register, 53 FR 20131, (correction, 53 FR 22022, *extension of comment period*, 53 FR 25502) a proposed consent agreement with analysis In the Matter of The Vons Companies, Inc., SSI Associates, L.P., and Safeway Stores Incorporated, for the purpose of soliciting public comment. Interested parties were given forty five (45) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: *§ 13.5 Acquiring corporate stock or*

[1] Copies of the Complaint, the Decision and Order, and the Commissioners Statements are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

assets; § 13.5–20 Federal Trade Commission Act. Subpart—Corrective Actions And/Or Requirements: *§ 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication.*

List of Subjects in 16 CFR Part 13

Supermarkets, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 88–22789 Filed 10–3–88; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 304

Hobby Protection Act; Imitation Numismatic Items

AGENCY: Federal Trade Commission.

ACTION: Final amendment.

SUMMARY: The Federal Trade Commission, pursuant to the Hobby Protection Act (15 U.S.C. 2101 *et seq.*), has amended § 304.6 of the Rules and Regulations under the Hobby Protection Act (16 CFR Part 304). The rule currently requires that the word "Copy" be marked on imitation numismatic items in dimensions no less than 2 millimeters high and 6 millimeters wide. The amendment permits use of a smaller marking to accommodate coins that are issued as miniature imitations.

EFFECTIVE DATE: The amendment will be effective on November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis Franke, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–3009.

SUPPLEMENTARY INFORMATION: The Hobby Protection Act requires that all imitation numismatic items sold in, or imported into, the United States shall be marked with the word "Copy" in a manner to be determined by the Federal Trade Commission. In 1975, the Commission promulgated rules requiring the word "Copy" to be marked on either the obverse or the reverse surface of the item. The words must have a vertical dimension of not less than two millimeters and a horizontal dimension of not less than six millimeters. The concept of requiring the word "Copy" to be a minimum size rather than to vary with the size of the coin or words on a coin was selected because it minimized the burden of compliance for industry.

After the rules were promulgated, miniature imitation numismatic items became more popular in the market. Marking some of these miniature imitations has posed a hardship since many are as small as or smaller than the minimum size required for the word "Copy." When an item covered by the rules is of such a small size that it is impossible to conform with the minimum size requirement, the manufacturer must request the Commission to issue a variance.

On May 23, 1983, the Commission published a notice in the **Federal Register** proposing to amend the rules and providing notice to the public of the opportunity to comment. Based on the comments received, the Commission has determined that the amendment is warranted and is in the public interest.

The amendment to the rule permits manufacturers of miniature numismatic items to mark the word "Copy" in smaller dimensions than those required under the present rule. For example, a coin having a diameter of only six millimeters could have the word "Copy" in a horizontal dimension of no less than one-half the diameter or three millimeters. The vertical dimension would be required to be no less than one-sixth of the diameter or one millimeter.

The amendment will facilitate compliance with the rule and thus should result in the lessening of deception. By allowing a relative size for the word "Copy", the amendment will encourage manufacturers and importers to increase the number of imitation miniatures which are properly marked. As a result, more consumers will be put on notice that such coins are imitations and not originals.

The current rule, with its absolute minimum size requirement and use of a variance request procedure, may impede entry into the market for imitation miniature numismatic items. Manufacturers and importers may forego the opportunity to sell imitation miniatures because of the costs and physical difficulties of compliance with the rule. The amendment will eliminate this barrier and should promote competition and allow the increased availability of imitation miniature numismatic items.

Finally, the amendment will eliminate the potential costs, in both time and resources, to industry and the Commission necessitated by individual variance applications for miniature numismatic items.

List of Subjects in 16 CFR Part 304

Hobbies, Labeling, Trade practices.

Accordingly, Chapter I of 16 CFR Part 304 is amended as follows:

PART 304—[AMENDED]

1. The authority citation for Part 304 continues to read as follows:

Authority: 15 U.S.C. 2101 et seq.

2. Section 304.1 is amended by adding paragraph (k) to read as follows:

§ 304.1 Terms defined.

* * * * *

(k) "Diameter of a reproduction" means the length of the longest possible straight line connecting two points on the perimeter of the reproduction.

3. Section 304.6 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 304.6 Marking requirements for imitation numismatic items.

* * * * *

(b) * * *

(3) An imitation numismatic item of incusable material shall be incused with the word "COPY" in sans-serif letters having a vertical dimension of not less than two millimeters (2.0 mm) or not less than one-sixth of the diameter of the reproduction, and a minimum depth of three-tenths of one millimeter (0.3 mm) or to one-half (½) the thickness of the reproduction, whichever is the lesser. The minimum total horizontal dimension of the word "COPY" shall be six millimeters (6.0 mm) or not less than one-half of the diameter of the reproduction.

(4) An imitation numismatic item composed of nonincusable material shall be imprinted with the word "COPY" in sans-serif letters having a vertical dimension of not less than two millimeters (2.0 mm) or not less than one-sixth of the diameter of the reproduction. The minimum total horizontal dimension of the word "COPY" shall be six millimeters (6.0 mm) or not less than one-half of the diameter of the reproduction.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88–22790 Filed 10–3–88; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance Benefits; U.S. Coverage

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final rules reflect: section 278 of Pub. L. 97–248 (the Tax Equity and Fiscal Responsibility Act) which provides Medicare coverage to certain eligible Federal employees; section 101 of Pub. L. 98–21 (the Social Security Amendments of 1983) which provides Social Security coverage to newly hired Federal civilian employees or to individuals appointed to Federal civilian service after a separation of more than 365 continuous days; section 4 of Pub. L. 98–118 (Unemployment and Social Security Benefits, Extension) which changes the date in section 101(c) of Pub. L. 98–21 with respect to when remuneration paid to retired Federal justices and judges is wages covered for Social Security purposes when these retired Federal justices and judges are assigned to active duty under the provisions of 28 U.S.C. 294; section 2601 of Pub. L. 98–369 (the Deficit Reduction Act of 1984) which lists certain exclusions relating to the performance of certain types of service in calculating the length of separation upon reappointment to Federal civilian service; section 3(b) of Pub. L. 99–221 (the Cherokee Leasing Act) which adds a type of service to the list of exclusions in calculating the length of separation upon reappointment to Federal civilian service; section 12112 of Pub. L. 99–272 (the Consolidated Omnibus Budget Reconciliation Act of 1985) which exempts payment to retired Federal justices and judges from Social Security coverage when they are assigned to active duty under the provisions of 28 U.S.C. 294; and sections 304 and 415 of Pub. L. 99–335 (the Federal Employees' Retirement System Act of 1986 and the Foreign Service Pension System Act of 1986) which in certain cases extends mandatory Social Security coverage to current Federal civilian employees who elect to be covered by these new retirement systems.

DATE: These regulations are effective October 4, 1988.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (301) 965–8470.

SUPPLEMENTARY INFORMATION:

Background

For many years Federal civilian employees and employees of many Federal instrumentalities generally were excluded from Social Security and Medicare coverage. Instead, most of these employees were covered by various Federal civilian retirement systems, the largest being the Civil Service Retirement System, and by optional participation in commercial medical plans that were made available. Our regulations on Social Security and Medicare coverage of Federal employees were not extensive because most employees were excluded. Statutory changes in the last 6 years amended the Social Security Act (the Act) and eliminated many of the previous coverage exclusions. These final regulations update our rules on coverage of Federal civilian employees for Medicare and show what will be considered by a Federal employer in determining coverage under Social Security.

Statutory Changes

1. Pub. L. 97–248

Section 278 of Pub. L. 97–248 (the Tax Equity and Fiscal Responsibility Act of 1982) amends sections 210(p), 226, and 226A of the Act. These amendments extend Medicare coverage under title XVIII of the Act to most Federal employees. The amendments apply to services in Medicare-qualified Federal employment performed after December 31, 1982. These provisions are explained in § 404.1018b. We also show by reference that there are services excepted by statute from Medicare coverage.

2. Pub. L. 98–21

Section 101(a) of Pub. L. 98–21 (the Social Security Amendments of 1983) amends section 210(a) of the Act by extending Social Security coverage to Federal employees first appointed to Federal employment after December 31, 1983, or reappointed after that date if the period of separation from the previous appointment exceeds 365 consecutive days.

In § 404.1018(a) and (c) we explain the provisions of the statute as they would be considered by an employer in determining whether or not your Federal employment is covered under Social Security. Section 404.1018(a) explains under what conditions your service is not covered. The statute requires that you be "continuously performing" the services as one of the conditions of exclusion. The meaning of "continuously performing" is explained in § 404.1018(g).

In § 404.1018(b)(1) through (3) we explain that certain executive, legislative, and judicial branch officials are covered under Social Security.

Section 404.1018(c) lists work that is excluded from Social Security coverage by statute without conditions. We list the exclusions contained in section 210(a)(6) of the Act and, in addition, have added the general statement noting that services may be excluded by other statutory provisions.

In addition, section 101(c) of Pub. L. 98–21 amends section 209 of the Act by providing that payments made after December 31, 1983, under 28 U.S.C. 371(b) to Federal justices and judges who were reassigned to active duty under the provisions of 28 U.S.C. 294 were to be covered under Social Security. This coverage was deferred, as explained in 3. below, and subsequently not provided, as explained in 6. below.

3. Pub. L. 98–118

Section 4 of Pub. L. 98–118 provides that the amendments made by section 101(c) of Pub. L. 98–21 were to be effective with respect to remuneration paid to retired judges and justices after December 31, 1985.

4. Pub. L. 98–369

Section 2601 of Pub. L. 98–369 (the Deficit Reduction Act of 1984) amends section 210(a)(5)(B) of the Act by excluding services performed as an employee for certain international organizations under 5 U.S.C. 3343 and 3581, as an employee of the American Institute of Taiwan pursuant to 22 U.S.C. 3310, and as a member of a uniformed service of the United States, including the National Guard and temporary service in the Coast Guard Reserve, who is returning to Federal service from being considered in calculating the length of separation upon reappointment to Federal civilian service. In § 404.1018(g)(2) we explain that these services are excluded in calculating the length of separation from Federal civilian service.

5. Pub. L. 99–221

Section 3(b) of Pub. L. 99–221 (the Cherokee Leasing Act) amends section 210(a)(5)(B)(i) of the Act by adding services as an employee with an Indian tribal organization, to which section 105(e)(2) of the Indian Self-Determination Act applies, to the list of service exclusions in calculating the length of separation upon reappointment

to Federal civilian service. This service is added to the list of excluded services in § 404.1018(g)(2).

6. Pub. L. 99–272

Pub. L. 99–272 (the Consolidated Omnibus Budget Reconciliation Act of 1985) again amends the provision for coverage of retired Federal judges on active duty. Section 12112 amends section 209 of the Act by excluding from Social Security coverage payments under 28 U.S.C. 371(b) to justices and judges who were reassigned to active duty under the provisions of 28 U.S.C. 294. The amendments are effective for services performed after December 31, 1983. This exclusion from coverage is shown in § 404.1018(a)(2).

In addition, section 13205 of Pub. L. 99–272 amends section 210(p) of the Act by changing "Medicare Qualified Federal Employment" to "Medicare Qualified Government Employment" and extends Medicare coverage to certain employees of a State or political subdivisions of a State. This amendment of section 210(p) of the Act does not affect Medicare coverage of Federal employees.

7. Pub. L. 99–335

Sections 304 and 415 of Pub. L. 99–335 (the Federal Employees' Retirement System Act of 1986 and the Foreign Service Pension System Act of 1986) further extend Social Security coverage to Federal employees. These provisions, contained in 5 U.S.C. 8401 through 8479 and 22 U.S.C. 4071 through 4071(j), are coordinated with Social Security coverage and benefits.

Sections 301 and 415 of Pub. L. 99–335 provided a time period for certain Federal civilian employees to elect to be covered under either the Federal Employees' Retirement System or the Foreign Service Pension System, as appropriate. This election could not be made before July 1, 1987. The coverage of those who so elect is reflected in § 404.1018(b)(3).

Effects of Section 205(p)(1) and (2) of the Act

Section 205(p)(1) and (2) of the Act provides special rules in case of Federal service. These special rules provide that the Secretary of Health and Human Services must accept the determinations made by other Federal agencies and instrumentalities as to whether an employee has covered service as a Federal employee, the periods of the service, whether the remuneration for the service is wages under section 209 of the Act, and the periods of time for which the wages were paid. In view of the rules imposed by section 205(p)(1) and (2) of the Act, these final regulations serve to inform readers of the provisions of the statutes and the general information that will be considered by the agency or instrumentality heads as employers in determining Social Security coverage.

To assist in referencing and to provide the basis for prior coverage and exclusions, we retained the text contained in § 404.1018. However, we renumbered the text as § 404.1018a, appended the phrase "—remuneration paid prior to 1984" to the section title and to the paragraph titles, and changed the verbs from present tense to past tense to make clear the limited applicability of the text.

Regulatory Procedures

The Department generally follows the Notice of Proposed Rulemaking and public comment procedures specified in the Administrative Procedure Act, 5 U.S.C. 553(b)(B), in the development of its regulations. That Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of proposed rulemaking and public comment procedures in this regulation because we are only reflecting statutory changes which are not discretionary and do not involve the setting of any policy. Therefore, opportunity for prior public comment is unnecessary and these amendments are being issued as final rules.

Executive Order 12291

The Secretary, in consultation with the Office of Management and Budget, has determined that this is not a major rule under Executive Order 12291. These final regulations do not result in costs that exceed the $100 million threshold established under Executive Order 12291 for performing an impact analysis. The changes to these regulations are made merely for the purpose of conforming the regulations to statutory provisions. We estimate that only Pub. L. 99–335 will result in income to the Social Security trust funds in the amounts of $308 million for fiscal year (FY) 1988, $354 million for FY 1989, and $352 million for FY 1990. Associated administrative costs are estimated to be $39 million for FY 1988, $43 million for FY 1989, and $47 million for FY 1990. The regulations are not discretionary and do not contain policy. Therefore, a regulatory impact analysis is not needed.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirement requiring the Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act of 1980, is not required.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.804 Social Security—Survivors Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability.

Dated: July 13, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: August 31, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Subpart K of Part 404, Chapter III of Title 20, Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

1. The authority citation for Part 404, Subpart K is revised to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 226, 226A, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 426, 426A, 429(a), 430, 431, and 1302.

2. Section 404.1018 is revised to read as follows:

§ 404.1018 Work by civilians for the United States Government or its instrumentalities—wages paid after 1983.

(a) *General.* If you are a civilian employee of the United States Government or an instrumentality of the United States, your employer uses the appropriate statutory provisions to determine whether your employment is covered under Social Security. To make this determination the employer will consider the date of your appointment to Federal service, your previous employing agency and your position, whether you were covered under Social Security or a Federal civilian retirement system, and whether you made a timely election to join a retirement system established by the Federal Employees'

Retirement System Act. Using this information and the following rules, the employer determines your service is covered unless—

(1) The service would have been excluded if the rules in effect in January 1983 had remained in effect; and

(i) You have been continously performing such service since December 31, 1983; or

(ii) You are receiving an annuity from the Civil Service Retirement and Disability Fund or benefits for service as an employee under another retirement system established by a law of the United States and in effect on December 31, 1983, for employees of the Federal Government other than a system for members of the uniformed services.

(2) The service is under the provisions of 28 U.S.C. 294, relating to the assignment of retired Federal justices and judges to active duty.

(b) *Covered services.*—(1) *Federal officials.* Any service for which you received remuneration after 1983 is covered if performed—

(i) As the President or the Vice President of the United States;

(ii) In a position placed in the Executive Schedule under 5 U.S.C. 5312 through 5317;

(iii) As a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service;

(iv) In a position to which you are appointed by the President, or his designee, or the Vice President under 3 U.S.C. 105(a)(1), 106(a)(1), or 197(a)(1) or (b)(1) if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule;

(v) As the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court, including the district court of a territory, a judge of the United States Claims Court, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate, or a referee in bankruptcy or United States bankruptcy judge; or

(vi) As a Member, Delegate, or Resident Commissioner of or to the Congress.

(2) *Legislative Branch Employees.* Service you perform for the legislative branch of the Federal Government for which you are paid remuneration after 1983 is generally covered by Social Security if such service is not covered by the Civil Service Retirement System or by another retirement system established by a law of the United States and in effect on December 31, 1983, for employees of the Federal Government other than a system for members of the uniformed services.

(3) *Election to Become Subject to the Federal Employees' Retirement System.* Your service is covered if you timely elected after June 30, 1987, to become subject to a retirement system established by the Federal Employees' Retirement Systems Act of 1986 or the Foreign Service Pension System Act of 1986, as appropriate, under 5 U.S.C. 8401 through 8479 and 22 U.S.C. 4071 through 4071(k).

(c) *Excluded Service.* Notwithstanding § 404.1018a and this section, your service is not covered if performed—

(1) In a penal institution of the United States as an inmate thereof;

(2) As an employee included under 5 U.S.C. 5351(2) relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government, other than as a medical or dental intern or a medical or dental resident in training;

(3) As an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

(4) Under any other statutory provisions that would require exclusion for reasons other than being in the employ of the Federal Government or an instrumentality of such.

(d) *Work as a Peace Corp Volunteer.* Work performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, 22 U.S.C. 2501 through 2523, is covered as employment.

(e) *Work as Job Corp Enrollee.* Work performed as an enrollee in the Job Corps is considered to be performed in the employ of the United States.

(f) *Work by Volunteer in Service to America.* Work performed and training received as a Volunteer in Service to America is considered to be performed in the employ of the United States if the volunteer is enrolled for a period of service of at least 1 year. If the enrollment is for less than 1 year, we use the common-law rules in § 404.1007 to determine the volunteer's status.

(g) *Meaning of "continuously performing"*—(1) *Absence of less than 366 days.* You are considered to be continuously performing service described in paragraph (a)(1)(i) of this section if you return to the performance of such service after being separated from such service for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983.

(2) *Other absences.* You are considered to be continuously performing service described in paragraph (a)(1)(i) of this section regardless of the length of separation or whether the period of separation began before, on, or after December 31, 1983, if you—

(i) Return to the performance of such service after being detailed or transferred from such service to an international organization as described under 5 U.S.C. 3343 or under 5 U.S.C. 3581;

(ii) Are reemployed or reinstated after being separated from such service for the purpose of accepting employment with the American Institute of Taiwan as provided under 22 U.S.C. 3310;

(iii) Return to the performance of such service after performing service as a member of a uniformed service including service in the National Guard and temporary service in the Coast Guard Reserve and after exercising restoration or reemployment rights as provided under 33 U.S.C. chapter 43; or

(iv) Return to the performance of such service after employment by a tribal organization to which section 105(e)(2) of the Indian Self-Determination Act applies.

3. Section 404.1018a is added to read as follows:

§ 404.1018a Work by civilians for the United States Government or its instrumentalities—remuneration paid prior to 1984.

(a) *General—remuneration paid prior to 1984.* If you worked as a civilian employee of the United States Government or an instrumentality of the United States, your work was excluded from employment if that work was covered by a retirement system established by law. Your work for an instrumentality that was exempt from Social Security tax was also excluded. Certain other work for the United States or an instrumentality of the United States was specifically excluded and is described in this section.

(b) *Work covered by a retirement system—remuneration paid prior to 1984.* Work you did as an employee of the United States or an instrumentality of the United States was excluded from employment if the work was covered by a retirement system established by a law of the United States. If you had a choice as to whether your work was covered by the retirement system, the work was not covered by that system until you chose that coverage. In order for the exclusion to apply, the work you did, rather than the position you held, must have been covered by the retirement system.

(c) *Work that was specifically excluded—remuneration paid prior to 1984.* Work performed by an employee of the United States or an

instrumentality of the United States was excluded if it was done—

(1) As the President or Vice President of the United States;

(2) As a Member of the United States Congress, a Delegate to Congress, or a Resident Commissioner;

(3) In the legislative branch of the United States Government;

(4) By a student nurse, student dietitian, student physical therapist or student occupational therapist who was assigned or attached to a Federal hospital, clinic, or medical or dental laboratory;

(5) By a person designated as a student employee with the approval of the Office of Personnel Management who was assigned or attached primarily for training purposes to a Federal hospital, clinic, or medical or dental laboratory, other than a medical or dental intern or resident in training;

(6) By an employee who served on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(7) By a person to whom the Civil Service Retirement Act did not apply because the person's services were subject to another retirement system established by a law of the United States or by the instrumentality of the United States for which the work was done, other than the retirement system established by the Tennessee Valley Authority under the plan approved by the Secretary of Health, Education, and Welfare on December 28, 1956; or

(8) By an inmate of a penal institution of the United States, if the work was done in the penal institution.

(d) *Work for instrumentalities of the United States exempt from employer tax—remuneration paid prior to 1984.*

(1) Work performed by an employee of an instrumentality of the United States was excluded if—

(i) The instrumentality was exempt from the employer tax imposed by section 3111 of the Code or by section 1410 of the Internal Revenue Code of 1939; and

(ii) The exemption was authorized by another law specifically referring to these sections.

(2) Work performed by an employee of an instrumentality of the United States was excluded if the instrumentality was not on December 31, 1950, subject to the employer tax imposed by section 1410 of the Internal Revenue Code of 1939 and the work was covered by a retirement system established by the instrumentality, unless—

(i) The work was for a corporation wholly owned by the United States;

(ii) The work was for a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Credit Union, a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, or a Federal Home Loan Bank;

(iii) The work was for a State, county, or community committee under the Agriculture Marketing Service and the Commodity Stabilization Service, formerly the Production and Marketing Administration; or

(iv) The work was by a civilian, who was not paid from funds appropriated by the Congress, in activities conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense or Secretary of Transportation at installations intended for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Defense Department or the Coast Guard, such as—

(A) Army and Air Force Exchange Service;

(B) Army and Air Force Motion Picture Service;

(C) Coast Guard Exchanges;

(D) Navy Ship's Service Stores; and

(E) Marine Corps Post Exchanges.

(3) For purposes of paragraph (d) (2) of this section, if an employee has a choice as to whether his or her work was covered by a retirement system, the work was not covered by that system until he or she chose that coverage. The work done, rather than the position held, must have been covered by the retirement system.

(e) *Work as a Peace Corp Volunteer—remuneration paid prior to 1984.* Work performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, 22 U.S.C. 2501 through 2523, was covered as employment.

(f) *Work as Job Corp Enrollee—remuneration paid prior to 1984.* Work performed as an enrollee in the Job Corps was considered to be performed in the employ of the United States.

(g) *Work by Volunteer in Service to America—remuneration paid prior to 1984.* Work performed and training received as a Volunteer in Service to America was considered to be performed in the employ of the United States if the volunteer was enrolled for a period of service of at least one year. If the enrollment was for less than one year, we used the common-law rules in § 404.1007 to determine the volunteer's status.

4. Section 404.1018b is added to read as follows:

§ 404.1018b Medicare qualified government employment.

If your services as a Federal employee is not otherwise covered employment under the Social Security Act, it is, nevertheless, for remuneration paid after 1982, Medicare qualified government employement, unless it is excluded under § 404.1018(c). This employment is used solely in determining eligibility for hospital insurance protection provided under Part A of title XVIII of the Social Security Act.

[FR Doc. 88-22829 Filed 10-3-88; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 886

[Docket No. 86P-0083]

Medical Laser Manufacturers Association; Nd:YAG LASER for Posterior Capsulotomy

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an order in the form of a letter to a petitioner reclassifying the neodymium:yttrium:aluminum:garnet (Nd:YAG) laser (mode-locked or Q-switched) for posterior capsulotomy, and substantially equivalent devices of this generic type, from class III (premarket approval) into class II (performance standards). The order is being codified in the Code of Federal Regulations, as specified herein.

EFFECTIVE DATE: The reclassification was effective March 31, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: On January 24, 1986, the Medical Laser Manufacturers Association (MLMA) submitted to FDA under section 513(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e)) and 21 CFR 860.120 a petition requesting reclassification of the Nd:YAG laser for posterior capsulotomy. On February 20, 1986, MLMA amended its petition to include section 513(f)(2) of the act (21 U.S.C. 360c(f)(2)) and 21 CFR 860.134 of the regulations as a basis for its requested relief. The petitioner requested that the ophthalmic Nd:YAG laser (mode-locked or Q-switched)

intended for posterior capsulotomy be reclassified from class III into class II.

Consistent with the act and the regulations, the agency referred the reclassification petition to the Ophthalmic Devices Panel (the Panel), an FDA advisory committee. On May 22, 1986, during an open public meeting, the Panel recommended that FDA reclassify the generic type of device from class III into class II. The Panel also recommended that FDA assign to this generic type of device the designation "Nd:YAG laser for posterior capsulotomy." The recommendation was based on the Panel's belief that the controls of class II are sufficient to provide reasonable assurance of the safety and effectiveness of the device. On December 14, 1987 (52 FR 47454), FDA published in the **Federal Register** a notice announcing the Panel's recommendation. Interested persons were given until February 12, 1988, to submit comments. FDA received no comments.

On March 31, 1988, FDA sent MLMA a letter (order) reclassifying the Nd:YAG laser for posterior capsulotomy, and substantially equivalent devices of this generic type, from class III into class II. Accordingly, as required by 21 CFR 860.134(b)(7) of the regulations, FDA is announcing the reclassification of the generic type of device Nd:YAG laser for posterior capsulotomy from class III into class II. Additionally, FDA is amending Part 886 of Title 21 of the Code of Federal Regulations to include the classification for Nd:YAG laser for posterior capsulotomy.

After considering the economic consequences of approving this reclassification, FDA certifies that this action requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Approval of this petition will not have a significant economic impact on a substantial number of small entities. The petitioner and all future manufacturers of Nd:YAG lasers will be relieved of the costs of complying with the premarket approval requirement in section 515 of the act (21 U.S.C. 360e).

There are no off-setting costs that the petitioner or other manufacturers would incur from reclassification into class II other than those associated with meeting a standard, once established. The magnitude of the economic savings from approval of this petition depends on the extent of premarket approval studies that the petitioner would have conducted and the number of future competitors satisfying the same requirements. Neither of these parameters can be reliably calculated to permit quantification of the economic savings.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Chapter I of Title 21 of the Code of Federal Regulations is amended in Part 886 to read as follows:

PART 886—OPHTHALMIC DEVICES

1. The authority citation for 21 CFR Part 886 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. New § 886.4392 is added to Subpart E to read as follows:

§ 886.4392 Nd:YAG laser for posterior capsulotomy.

(a) *Identification.* The Nd:YAG laser for posterior capsulotomy consists of a mode-locked or Q-switched solid state Nd:YAG laser intended for posterior capsulotomy, which generates short pulse, low energy, high power, coherent optical radiation. When the laser output is combined with focusing optics, the high irradiance at the target causes tissue disruption via optical breakdown. A visible aiming system is utilized to target the invisible Nd:YAG laser radiation on or in close proximity to the target tissue.

(b) *Classification.* Class II.

Dated: September 19, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–22752 Filed 10–3–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Participation Requirements for Residential Treatment Centers (RTC)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule amendment; change of effective date.

SUMMARY: Amendment No. 12 to DoD 6010.8–R, published in the **Federal Register** on August 1, 1988 (53 FR 28873), clarified participation requirements and established a new reimbursement system for payment of RTC care to be in effect as of September 1, 1988. A law suit seeking to enjoin implementation of the reimbursement provision was filed in federal district court on August 10, 1988. A subsequent amendment was published in the **Federal Register** on September 1, 1988 (53 FR 33808) extending the effective date of the final rule to October 1, 1988. It provided sufficient time for preliminary meetings with plaintiffs to discuss those issues and concerns surrounding the new reimbursement methodology and avoided the need for an immediate court hearing on a Motion for Preliminary Injunction. This amendment further postpones the effective date to December 1, 1988, to allow for ongoing negotiations, a court hearing, if necessary, and modifies the grandfathering provisions set forth in the supplementary information section of the rule.

EFFECTIVE DATE: The effective date is deferred until December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. David Bennett, Office of Program Development, Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Aurora, Colorado 80045–6900, telephone (303) 361–3537.

SUPPLEMENTARY INFORMATION: On August 1, 1988, a final rule was published in the **Federal Register** (FR Do. 88–17228) Clarifying participation requirements and establishing a new reimbursement system for payment of RTC care. Over twenty-three categories of public comments were addressed and responded to in the comment section of this rule. The agency endeavored to give as much detail as possible in explaining its position. Material changes in the final rule were made from the proposed rule (52 FR 46098, (December 4, 1987) as a result of public comment; i.e., (1) exclusion of geographically distant family therapy from the all-inclusive RTC rate; (2) clarification of the meaning of "all-inclusive rate"; and (3) a liberalization of the coverage of RTC education services. Revised participation agreements were sent out to CHAMPUS authorized RTCs on July 29, 1988, in anticipation of publication of the final rule. The RTCs were required to sign and return the paticipation agreements by August 25, 1988. On August 10, 1988, the National Association of Psychiatric Treatment Centers for Children (NAPTCC); the American Association of Children's

Residential Centers; Coalition of Concerned Physicians of San Diego; and Rigena W. Nordyke, on behalf of herself and her minor child, filed a lawsuit in the United States District Court for the District of Colorado seeking a permanent injunction and filed a Motion for Preliminary Injunction seeking to prevent the August 1, 1988, final rule from taking effect on September 1, 1988.

Pursuant to the Court's direction, counsel for the government and OCHAMPUS officials met with plaintiffs' counsel and with representatives of NAPTCC in an attempt to resolve or compromise those conflicts still existing over the new reimbursement methodology without the need for judicial intervention. The effective date of the RTC final rule was postponed to October 1, 1988, in order to allow the necessary time to meet and analyze those issues presented at this meeting and to avoid the need to immediately address the matter in a court hearing on the Motion for Preliminary Injunction while discussions were taking place. The postponement also extended the requirement for signature and return of participation agreements to September 26, 1988. Notice to this effect was published in the **Federal Register** on September 1, 1988 (53 FR 33808).

The parties have been engaged in serious discussions in person, by telephone, and by correspondence to determine whether this matter can be resolved without further litigation. In order to preserve the status quo pending the outcome of the negotiations and permit the scheduling of a court hearing, if necessary, the effective date of the final RTC rule (53 FR 28873, (August 1, 1988)) is extended to December 1, 1988. This postponement extends the requirement for signature and return of participation agreements to November 18, 1988. OCHAMPUS' voluntary extension of the effective date of the August 1, 1988, final rule is being done to avoid the need for judicial intervention while discussions are being held.

In a Fiscal Year 1988 House Armed Services Committee report, committee members were concerned that children already in CHAMPUS-approved RTCs prior to the effective date of the new rule could suffer if forced to change psychotherapists, or see their current psychotherapist less frequently than needed. Because of these concerns, the committee directed CHAMPUS to ensure that no child receiving RTC care on the day before the new reimbursement mechanism goes into effect is forced to change psychotherapists or to see their current psychotherapist less frequently than that psychotherapist deems appropriate for the duration of the child's inpatient treatment.

The supplementary information section of the final rule is being revised to allow all CHAMPUS beneficiaries who are patients in CHAMPUS-approved RTCs as of November 30, 1988, to have their claims reimbursed on the same basis and conditions and at the same rates in effect on November 30, 1988, until the beneficiaries are discharged, transferred, or the care is no longer determined medically necessary or appropriate by CHAMPUS in standard utilization and quality review procedures. The effect of this change is to "grandfather" such beneficiaries for the period of their RTC care until discharge, rather than for a maximum of two months as specified in the August 1, 1988, rule. This change will assure continuity of care, maintain the primary therapist-patient relationship, and delay the implementation of the all-inclusive rate for those patients admitted prior to the December 1, 1988, effective date. The August 1, 1988 final rule, including this supplemental notice, makes *no* changes to program regulations and requirements affecting the length of admissions or the frequency of therapy sessions.

The effective date is deferred until December 1, 1988.

The grandfathering provision in the supplementary information section is amended to read as follows: "There will be a grandfathering period for those CHAMPUS patients who are receiving care in an RTC at the time the new reimbursement methodology is adopted. To ensure continued care of these beneficiaries, payment at the current rate, including separate payment for professional services, will continue for all beneficiaries admitted prior to the implementation date, until discharge, transfer, or until the care is no longer determined medically necessary or appropriate by CHAMPUS in standard utilization and quality review procedures.

Authority: 10 U.S.C. 1079; 1086; 5 U.S.C. 301.

September 29, 1988.

P.H. Means,

OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 88-22842 Fined 9-30-88 10:23 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 10

[Docket No. 80340-8188]

Practice Before the Patent and Trademark Office; Government Employees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending it rules governing admission of Government employees to practice before the PTO in patent cases, Part 10 of Title 37. Those rules presently permit officers and employees of the Government to be registered only if their official duties include preparation and prosecution of patent applications. A recent decision of the U.S. District Court for the District of Columbia has held that these rules are partially invalid. By these amended rules, the PTO has conformed the rules to the court's decision and has eliminated the "inactive" status designation of registered attorneys and agents who became employed by the Government, but do not engage in the preparation and prosecution of patent applications.

EFFECTIVE DATE: November 4, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy C. Slutter by telephone at (703) 557-4035 or by mail marked to her attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

Attorneys and agents must be admitted to practice before the Patent and Trademark Office (PTO) in patent cases. 35 U.S.C. 31; 37 CFR 10.10(a). Part 10 of Title 37 is being amended to allow Federal employees who fulfill the requirements for registration set forth at 37 CFR 10.7 to have their names placed on the PTO register of attorneys and agents.

In the past, the rules provided that an officer or employee of the Government whose official duties include preparation and prosecution of patent applications may be registered. 37 CFR 10.6(d). Under the rule, all other Government employees were not to be registered. If a registered practitioner became a Government employee, the rule required that the petitioner's name be endorsed as "inactive" if the employee's duties did not involve the preparation and prosecution of patent applications.

In a recent decision by the U.S. District Court for the District of Columbia, portions of 37 CFR 10.6(d) were held to be invalid. In that case, an attorney presently employed by a Federal agency petitioned the Commissioner, requesting that his name be placed (with an inactive designation) on the register of attorneys and agents entitled to practice before the PTO in patent cases. His petition was denied in view of 37 CFR 10.6(d). *In re Athridge*, 230 USPQ 470 (Comm'r Pat. 1986). Following the Commissioner's decision, the attorney sought judicial review in the U.S. District Court for the District of Columbia. The court determined that 37 CFR 10.6(d) was invalid to the extent that it precluded registration of an otherwise qualified individual solely on the basis of his status as a Government employee. Based on its determination, the court held that the employee could be registered and designated as "inactive." *Athridge* v. *Quigg*, 655 F. Supp. 779, 3 USPQ 2d 1391 (D.D.C. 1987). See also *Athridge* v. *Quigg*, 4 USPQ 2d 1656 (Comm'r Pat. 1987).

Amendments to 37 CFR 10.6, 10.10, and 10.23(c) were proposed in a rulemaking notice published in the **Federal Register** at 53 FR 20871–20872 (June 7, 1988) and at 1091 *Official Gazette* 38 (June 28, 1988).

Interested parties were requested to submit written comments on or before August 9, 1988. Written comments were submitted by two individuals and one organization.

Section 10.6, as amended, removes § 10.6(d). The effect of removing § 10.6(d) will permit otherwise qualified Government employees to be registered to practice before the PTO in patent cases. Registration, however, will not relieve any Government employee from otherwise complying with conflict of interest requirements, e.g., 18 U.S.C. 203, 205, 207, applicable agency regulations and personnel practices, and applicable codes of professional responsibility.

Section 10.10, as amended, refers to restrictions on practice in patent cases imposed on Government employees, Office employees, and former Office employees.

Section 10.23(c), which sets forth specific forms of misconduct, is amended by revising § 10.23(c)(13) to reflect the redesignation of § 10.6(e) as § 10.10(b), and by adding new paragraphs (c) and (d), which provide that actions contrary to the restrictions on practice in patent cases set forth in amended § 10.10 (c) and (d) will be treated as misconduct by the Office.

One commenter expressed concern that under § 10.10(b) as proposed, a former member of the patent examining corps could be denied registration (or reinstatement) as the result of filing an application that is assigned to his or her former examining group by the Office even though when filing the application, the practitioner sincerely did not believe the application would be assigned to that group. It is noted that § 10.10(b) contains the same provisions with respect to applications filed by former patent examiners as former § 10.6(e). A former member of the patent examining corps would not be denied registration for filing an application assigned to his or her former group if immediate action is taken to withdraw from further prosecution of the case when he or she finds out that the application has been assigned to his or her former group. Actionable misconduct occurs when the individual *knowingly* acts in violation of the undertaking signed under § 10.10(b). *See* § 10.23(c)(13).

Two comments were received suggesting an addition to § 10.66 that would correspond to newly proposed § 10.10(d). However, § 10.66 relates to Canon 5 of the Patent and Trademark Office Code of Professional Responsibility (A practitioner should exercise independent judgment on behalf of a client) and is concerned with a practitioner's relationship with clients whereas newly proposed § 10.10(d) is concerned with applicable conflict of interest laws, regulations or codes of professional responsibility as they relate to Government employees. Accordingly, it is felt that the suggested addition to § 10.66 would be inappropriate.

Two commenters suggested the addition of a new section to be designated as § 10.11(c), adapted from a notice in the Official Gazette (1064 O.G. 12) "Reinstatement of Patent Attorneys and Agents to Practice Before the U.S. Patent and Trademark Office." Such a change is not adopted in this rule package but is under consideration for a future rule change.

Two comments were received concerning the differences in the language used in proposed §§ 10.10(b) and 10.23(c)(13) and the need to avoid inconsistencies in these two sections. In particular, § 10.10(b) (last paragraph) included "providing assistance," whereas § 10.23(c)(13) did not; and § 10.23(c)(13) recited "knowingly," whereas § 10.10(b) did not. This suggestion is being adopted. Amended § 10.23(c)(13) will include the language "providing assistance" as it appears in § 10.10(b) and § 10.10(b) will be changed to include the word "knowingly."

It was suggested by two commenters that additional explanatory commentary be provided with respect to newly proposed § 10.10 (c) and (d). It is felt that this is unnecessary in connection with the rule change. Government employees with questions concerning applicable conflict of interest laws, regulations or codes of professional responsibility should address these questions to their respective Offices of General Counsel. With respect to further comment by the Office concerning practice by Government employees before the PTO, the last paragraph under Supplementary Information in the Notice of proposed rulemaking provides sufficient clarity on this issue.

Two comments were received concerning the status of individuals who may be affected by this rule change. These individuals should contact the Office of Enrollment and Discipline (OED). In addition, the Office will publish a notice in the Official Gazette listing all individuals registered as inactive and their last known address.

Two commenters correctly observed and proposed § 10.10(b) does not require a written statement of official duties for an officer or Government employee whose official duties require the preparation and prosecution of applications for patent.

The citation to the Commissioner's decision indicating that Mr. Athridge's name has been entered on the "active" list of registered attorneys and agents entitled to practice before the PTO in patent cases has been added to the discussion under Supplementary Information as suggested.

The suggestion that the term "contrary to" be changed to "in violation of" in proposed § 10.23(c)(20) has not been adopted. The term "contrary to" is considered preferable.

Two comments were received concerning the continued effect of an opinon rendered by the Acting United States Attorney General, 41 *Op. Att. Gen.* 21, 1949 *Dec. Comm'r Pat.* 1 (1949). In response, the Commissioner advises that the PTO maintains the import of that decision is unchanged with respect to practice before the PTO by Government employees. *See In re Athridge*, 230 USPQ 470 (Comm'r Pat. 1986).

Other Considerations

This rule change will not have a significant impact on the quality of the human environment or the conservation of energy resource.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. (96–354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The rule change allowing Government employees who meet the requirements set forth at 37 CFR 10.7 to have their names placed on the Patent and Trademark Office register of attorneys and agents would not be expected to result in an increase of fees charged by attorneys and agents to entities, including small entities.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect to the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no federalism implications affecting the relationship between the national government and the state as outlined in Executive Order 12612.

The rule change will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Office of Management and Budget approval of the registration information reporting requirements contained in the proposed rules was extended until July 31, 1990. (OMB Control No. 0651–0012).

List of Subjects in 37 CFR Part 10

Administrative practice and procedure, Conflicts of interest, Courts, Inventions and patents, Lawyers.

Pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6 and 31, Part 10 of Title 37 of the Code of Federal Regulations is amended as set forth below:

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

1. The authority citation for 37 CFR Part 10 continues to read as follows:

Authority: 5 U.S.C 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

§ 10.6 [Amended]

2. Section 10.6 is amended by removing paragraphs (d) and (e).

3. Section 10.10 is revised to read as follows:

§ 10.10 Restrictions on practice in patent cases.

(a) Only practitioners who are registered under § 10.6 or individuals given limited recognition under § 10.9 will be permitted to prosecute patent applications of others before the Office.

(b) No individual who has served in the patent examining corps of the Office may practice before the Office after termination of his or her service, unless he or she signs a written undertaking,

(1) Not to prosecute or aid in any manner in the prosecution of any patent examining group during his or her period of service therein and

(2) Not to prepare or prosecute or to assist in any manner in the preparation or prosecution of any patent application pending in any patent application of another (i) assigned to such group for examination and (ii) filed within two years after the date he or she left such group, without written authorization of the Director. Associated and related classes in other patent examining groups may be required to be included in the undertaking or designated classes may be excluded from the undertaking. When an application for registration is made after resignation from the Office, the applicant will not be registered if he or she has prepared or prosecuted or assisted in the preparation or prosecution of any patent application as indicated in the paragraph. Knowingly preparing or prosecuting or providing assistance in the preparation or prosecution of any patent application contrary to the provisions of this paragraph shall constitute misconduct under § 10.23(c)(13) of this part.

(c) A practitioner who is an employee of the Office cannot prosecute or aid in any manner in the prosecution of any patent application before the Office.

(d) Practice before the Office by Government employees is subject to any applicable conflict of interest laws, regulations or codes of professional responsibility.

(Approved by the Office of Management and Budget under control number 0651–0012)

4. Section 10.23 is amended by revising paragraph (c)(13) and by adding new paragraph (c)(19) and (c)(20) to read as follows:

§ 10.23 Misconduct

* * * * *

(c) * * *

(13) Knowingly preparing or prosecuting or providing assistance in the preparation or prosecution of a patent application in violation of an understanding signed under § 10.10(b).

* * * * *

(19) Action by an employee of the Office contrary to the provisions set forth in § 10.10(c).

(20) Knowing practice by a Government employee contrary to applicable Federal conflict of interest laws, or regulations of the Department, agency or commission employing said individual.

* * * * *

Date: September 15, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88–22766 Filed 10–3–88; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–3459–2]

Final Authorization of State Hazardous Waste Management Program; Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Nebraska has applied for authorization of revisions to its previously authorized hazardous waste management program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Nebraska's application and has made a decision, subject to public review and comment, that Nebraska's hazardous waste management program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is approving Nebraska's hazardous waste management program revisions. Nebraska's application for program revision is available for public review and comment.

DATES: Final authorization for Nebraska's revisions shall be effective December 3, 1988 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Nebraska's program revision application must be received by the close of business November 3, 1988.

ADDRESSES: Copies of Nebraska's program revision application are available for inspection and copying during normal business hours at the following addresses: Hazardous Waste Section, Nebraska Department of

Environmental Control, PO Box 98922, 301 Centennial Mall South, Lincoln, Nebraska 68509, phone: 402–471–4217; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, phone: 202/382–5926; U.S. EPA Region VII, Library, (Ms. Constance McKenzie) 726 Minnesota Avenue, Kansas City, Kansas 66101, phone: 913/236–2828. Written comments should be sent to Jack Coakley, RCRA Branch, U.S. EPA, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Jack Coakley, U.S. EPA, 726 Minnesota Avenue, Kansas City, Kansas 66101; 913–236–2852, (FTS) 757–2852.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or the Act") 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary whenever Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266, 124 and 270.

B. State of Nebraska

Nebraska initially received final authorization effective February 7, 1985 (50 FR 3345, January 24, 1985). Nebraska submitted a draft application for additional program authorization on September 29, 1987 and submitted a final application for approval of its program revisions on April 12, 1988. This application includes a request for authorization of some RCRA requirements promulgated under the Hazardous and Solid Waste Amendments of 1984 (HSWA) Pub. L. 98–616.

The State has adopted and applied for authorization of the program provisions listed below. For a full discussion of each of the provisions, the reader is referred to **Federal Register** promulgation of that provision. The provisions are: Biennial Report (January 28, 1983, 48 FR 3981–3983), Permit Rules Settlement Agreement (September 1, 1983, 48 FR 39622), Interim Status Standards Applicability (November 22, 1983, 48 FR 52718–52720), Chlorinated Aliphatic Hydrocarbon Listing (F024) (February 10, 1984, 49 FR 5312), National Uniform Manifest (March 20, 1984, 49 FR 10500–10510), Permit Rules Settlement Agreement (April 24, 1984, 49 FR 17718–17719), Warfarin and Zinc Phosphide (May 10, 1984, 49 FR 19923), Lime Stabilized Pickle Liquor Sludge (June 5, 1984, 49 FR 23287), Household Waste (November 13, 1984, 49 FR 44980), Interim Status Standards Applicability (November 21, 1984, 49 FR 46095), Correction to Test Methods Manual (December 4, 1984, 49 FR 47391), Satellite Accumulation (December 20, 1984, 49 FR 49571–49572), Definition of Solid Waste (January 4, 1985, 50 FR 614–668), Dioxin Waste, Listing and Management Standards (January 14, 1985, 50 FR 1978–2006), Paint Filter Test (April 30, 1985, 50 FR 18370–18375), Interim Status Standards for Treatment, Storage, and Disposal Facilities (April 23, 1985, 50 FR 16044–16048), HSWA Codification Rule (July 15, 1985, 50 FR 28702–28715 except Corrective Action and Hazardous Waste Exports), Listing of TDI, DNT and TDA Wastes (October 23, 1985, 50 FR 42936–42943), Burning of Waste Fuels in Boilers and Industrial Furnaces (November 29, 1985, 50 FR 49164–49212 as amended November 19, 1986, 51 FR 41900–41904 and April 13, 1987, 52 FR 11819–11822), Listing of Spent Solvents (December 13, 1985, 50 FR 53315–53320), Listing of EDB Wastes (February 13, 1986, 51 FR 5330), Listing of Four Spent Solvents (February 25, 1986, 51 FR 6541), Generators of 100 to 1000 kg Hazardous Waste (March 24, 1986, 51 FR 10174–10176), Financial Responsibility Settlement Agreement (May 2, 1986, 51 FR 16443–16459), Listing of Spent Pickle Liquor (K062) (May 28, 1986, 51 FR 19320 as amended September 22, 1986, 51 FR 33612), Codification Rule Technical Correction (May 28, 1986, 51 FR 19176), Standards/Interim Standards for Owners and Operators of Treatment, Storage and Disposal Facilities (August 8, 1986, 51 FR 28556), Standards for Generators-Waste Minimization Certifications (October 1, 1986, 51 FR 35190–35194), Availability of Information section 3006(f).

EPA has reviewed the Nebraska application and has made a decision that Nebraska's waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently EPA intends to grant final authorization for the additional program modifications to Nebraska. The public may submit comments on EPA's immediate final decision until November 3, 1988. Copies of Nebraska's application for program revision are available for inspection and copying at the locations indicated in the **"ADDRESSES"** section of this notice.

Approval of Nebraska's program revision shall become effective 60 days from today unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverse the decision. The State will review any hazardous waste permits which were issued under State Law prior to this authorization and modify or revoke and reissue such permits as necessary to require compliance with the amended State Program, Nebraska Environmental Protection Act and the rules and regulations governing hazardous waste management in Nebraska. The State will modify or revoke and reissue these State permits as RCRA permits within 90 days after receiving final authorization. The State of Nebraska has not requested authority to operate its hazardous waste management program on Indian lands.

C. Decision

I conclude that Nebraska's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly Nebraska is granted final authorization to operate its hazardous waste program as revised. Nebraska now has responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its revised program application and previously approved authorities. Nebraska also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Nebraska's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous Waste transportation, Hazardous Waste, Indian Lands, Incorporation by reference, recordkeeping requirements.

Morris Kay,

Regional Administrator.

[FR Doc. 88-22813 Filed 10-3-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS-42084E; FRL 3459-1]

Commercial Hexane; New Definition of Test Substance and Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the final test rule in 40 CFR 799.2155 on commercial hexane which was published in the **Federal Register** of February 5, 1988 (53 FR 3382). The rule was issued under section 4(a) of the Toxic Substances Control Act (TSCA). This amendment redefines the percentage of *n*-hexane in the test substance and extends the deadlines for submission of notices of intent to test, exemption applications, and test results. It also eliminates the 45-day waiting period between submission of study plans and the initiation of testing for neurotoxicity as required by this rule.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern (daylight or standard as appropriate) time on October 18, 1988. This rule shall become effective on November 17, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M Street SW., Washington, DC 20460,(202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is amending the final rule on commercial hexane by changing the specification of the test substance and the effective date and eliminating the 45-day waiting period between submission of neurotoxicity study plans and the initiation of neurotoxicity testing.

I. Background

EPA issued a final rule under TSCA section 4(a)(1)(B), published in the **Federal Register** of February 5, 1988 (53 FR 3382) that established health effects testing requirements for commercial hexane. It specified that the test substance conform to ASTM D1836 specifications and contain no more than 40 liquid volume percent *n*-hexane and no less than 10 liquid volume percent methylcyclopentane (MCP). It also established the effective date of the rule as March 21, 1988.

On March 25, 1988, the American Petroleum Institute (API) notified EPA that the *n*-hexane content of commercial hexane currently being manufactured did not meet the specifications of the test substance as promulgated (Ref. 1). According to API, the commercial hexane with the lowest percentage of *n*-hexane that is currently available in the market and that has potential for work place and consumer exposure contains about 55 liquid volume percent *n*-hexane (Ref. 1). On April 13, 1988, API (Ref. 3) requested that EPA modify the definition of the test substance and extend the reporting deadlines in the rule accordingly. From the new data, EPA concluded that a range of between 51 to 55 percent *n*-hexane formulation represented the minimum *n*-hexane content of a currently available commercial hexane product. Therefore, the change in the definition of the test substance requested by API was warranted.

On May 27, 1988 (53 FR 19315) EPA proposed to redefine the commercial hexane test substance as a mixture that contains at least 40 liquid volume percent but no more than 55 liquid volume percent *n*-hexane, and no less than 10 liquid volume percent MCP. In the final test rule (53 FR 3382), EPA stated that it wanted to test a commercial hexane that contained the smallest fraction of *n*-hexane so that the *n*-hexane would not mask the effects of MCP and six other carbon (C_6) isomers found in commercial hexane products. EPA retained this position when it proposed the revised definition.

On May 27, 1988, EPA also proposed that a new effective date be set for the test rule which would be 44 days after publication of this amendment of the test substance definition. The new effective date would allow an extension of dates for completion of testing, necessitated by the time consumed in proposing, receiving comment, and promulgating the change in the test substance definition

II. Public Comments

EPA received a written comment from API supporting the proposed revision of the definition of the test substance and the proposed new effective date (Ref. 4).

On July 6, 1988, API informed EPA that it has a contractor who could begin neurotoxicity testing by October 1, 1988 (Ref. 5). To allow API to initiate neurotoxicity testing as soon as possible, EPA decided to eliminate the procedural requirement in 40 CFR 790.50(a)(1) which requires that study plans be submitted no later than 45 days before initiating each test. This change applies only to neurotoxicity testing of commercial hexane required under 40 CFR 799.2155(c)(7).

III. New Test Substance Definition

Based on confidential business information (CBI) on the *n*-hexane composition of currently available commercial hexane, EPA is redefining the commercial hexane test substance as a mixture that contains at least 40 liquid volume percent but no more than 55 liquid volume percent *n*-hexane, and no less than 10 liquid volume percent MCP.

IV. New Effective Date of the Test Rule

The new effective date of the final test rule (53 FR 3382) is November 17, 1988. This new date will allow an extension of the dates for completion of testing (Ref. 2) and for other submission requirements specified in 40 CFR 790.45 which are calculated from the effective date of the final test rule.

V. Elimination of 45-Day Waiting Period

The requirement under 40 CFR 790.50(a)(1) to submit study plans no later than 45 days before initiating each test does not apply to the neurotoxicity testing of commercial hexane required under 40 CFR 799.2155(c)(7). The test sponsor, however, must submit the neurotoxicity study plans to EPA before testing is initiated.

VI. Economic Analysis

A change in the test substance definition will not significantly alter the cost of testing. Thus, the economic analysis for the final test rule for commercial hexane is unchanged.

VII. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS-42084). This record includes information considered by the EPA in developing this amendment and appropriate **Federal Register** notices.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices consisting of:

(a) Notice of proposed test rule on MCP and commercial hexane (51 FR 17854; May 15, 1986).

(b) Notice of final test rule for commercial hexane and methylcyclopentane (53 FR 3382; February 5, 1988).

(c) Notice of proposed definition of test substance and effective date for commercial hexane test rule (53 FR 19315, May 27, 1988).

(2) Communications consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

B. References

(1) American Petroleum Institute (API) Letter from Martha A. Beauchamp, Director of Health & Environmental Affairs Department, to Charles Elkins, Director, Office of Toxic Substances, USEPA. (March 25, 1988.)

(2) USEPA, Letter from Susan F. Vogt, Deputy Director, Office of Toxic Substances, to Martha A. Beauchamp, API. (April 8, 1988.)

(3) API, Letter from Martha Beauchamp to A. E. Conroy, Director, Office of Compliance Monitoring, Office of Pesticides and Toxic Substances and to Susan F. Vogt, USEPA. (April 13, 1988.)

(4) API, Letter from Martha Beauchamp to the TSCA Public Docket Office, Office of Toxic Substances, USEPA. (June 22, 1988.)

(5) API, Phone conversation between Bob Fensterheim and Catherine Roman, Test Rules Development Branch, Office of Toxic Substances, USEPA. (July 6, 1988.)

CBI, while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. NE–G004, 401 M Street SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except on legal holidays.

VIII. Other Regulatory Requirements

A. Executive Order 12291

EPA judged that the final test rule was not subject to the requirement of a Regulatory Impact Analysis under Executive Order 12291. EPA has determined that the modifications to the rule do not alter this determination.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA certified that the final test rule would not have a significant impact on a substantial number of small businesses. The modifications to the final rule made in this rule do not change this determination.

C. Paperwork Reduction Act

This Agency has determined that this rule does not change existing recordkeeping or reporting requirements nor does it impose any additional recordkeeping or reporting requirements on the public.

Send comments regarding this rule to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR Part 799

Chemicals, Environmental protection, Hazardous substances, Laboratories, Recordkeeping and reporting requirements, Testing.

Dated: September 21, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

Part 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2063, 2611, 2625.

2. By revising § 799.2155(a)(2), (b), and (d) to read as follows:

§ 799.2155 Commercial hexane.

(a) * * *

(2) The commercial hexane test substance, for purposes of this section, is a product which conforms to the specifications of ASTM D1836 and contains at least 40 liquid volume percent but no more than 55 liquid volume percent *n*-hexane and no less than 10 liquid volume percent MCP.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import) or process or intend to manufacture or process commercial hexane, as defined in paragraph (a)(1) of this section and other than as an impurity, from the effective date of the final rule to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests in accordance with Part 792 of this chapter, and submit data, or submit exemption applications, as specified in this section, Subpart A of this part, and Part 790 of this chapter for single-phase rulemaking. Persons who manufacture commercial hexane as a byproduct are covered by the requirements of this section. Notwithstanding § 790.50(a)(1) of this chapter, persons who notify EPA of their intent to conduct neurotoxicity testing in compliance with paragraph (c)(7) of this section may submit study plans for those tests less than 45 days before beginning testing provided that EPA receives the study plans before this testing begins.

* * * * *

(d) *Effective date.* (1) The effective date of § 799.2155 will be November 17, 1988.

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

[FR Doc. 88–22814, Filed 10–3–88; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 53, No. 192
Tuesday, October 4, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430 and 432

Reduction in Grade and Removal Based on Unacceptable Performance

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is publishing for comment a revision of its proposed regulations on reduction in grade and removal based on unacceptable performance. These revisions modify the organization, structure, and definitions of the current regulations in order to improve agency and employee understanding of the authorities provided by the Civil Service Reform Act of 1978. The coverage and exclusion sections have been expanded and clarified, the definition section expanded, and the section on agency procedures has been reorganized to make clearer the steps and requirements involved in effecting an action under Part 432.

DATE: Comments must be received on or before November 3, 1988.

ADDRESS: Written comments may be sent to Employee Relations Division, Office of Employee and Labor Relations, Room 7625, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Tim Dirks or Mary Giallorenzi, (202) 653–8551.

SUPPLEMENTARY INFORMATION:

General

OPM published proposed revisions to Part 432 on February 23, 1987 (52 FR 5463). OPM received comments from 16 agencies, three labor unions, and four individuals. Based on these comments and OPM's continuing review of the legal and policy requirements of 5 U.S.C. Chapter 43, OPM believes that several changes should be made to the regulations which were not initially proposed on February 23, 1987. In order to provide interested parties an opportunity to respond to these proposed changes, OPM is publishing these revised proposed regulations for public comment.

To enable the public to better understand the proposed revisions in the regulations, we are republishing below the *initial February 23, 1987 proposed regulations* as well as the comments we received and OPM's response to those comments. The *new proposed regulations* follow the comment and response material.

PART 432—REDUCTION IN GRADE AND REMOVAL BASED ON UNACCEPTABLE PERFORMANCE

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432.101 Statutory authority.
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Authority: 5 U.S.C. 4305

§ 432.101 Statutory authority.

Section 4303(a) of title 5 of the United States Code authorizes agencies to reduce in grade or remove an employee for unacceptable performance. This part contains regulations that the Office of Personnel Management (OPM) has prescribed to implement and supplement this authority.

§ 432.102 Coverage.

(a) *Actions covered.* This part covers reduction in grade and removal of an employee based solely on unacceptable performance.

(b) *Actions excluded.* This part does not apply to the following:

(1) The reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2);

(2) The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less;

(3) The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(4) The reduction in grade or removal for minimally acceptable performance of a critical element;

(5) The reduction in grade or removal based on performance of a noncritical element;

(6) An action taken by the Special Counsel of the Merit Systems Protection Board under the authority of 5 U.S.C. 1206;

(7) An action taken under 5 U.S.C. 7521 against an administrative law judge;

(8) An action taken under 5 U.S.C. 7532 in the interest of national security;

(9) An action taken under a provision of statute, other than one codified in title 5 of the U.S. Code, which excepts the action from the provisions of title 5 of the U.S. Code;

(10) A removal from the Senior Executive Service to a civil service position outside the Senior Executive Service under Part 359 of this chapter;

(11) A reduction-in-force governed by Part 351 of this chapter;

(12) A voluntary action initiated by the employee;

(13) A performance-based action taken under Part 752 of this chapter;

(14) An action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, in accordance with Part 335 of this chapter;

(15) An involuntary retirement because of disability under Part 831 of this chapter; and

(16) A termination in accordance with terms specified as conditions of employment at the time the appointment was made.

(c) *Agencies covered.* This part applies to agencies covered by 5 U.S.C. 4301(1) which are as follows:

(1) The executive departments listed at 5 U.S.C. 101;

(2) The military departments listed at 5 U.S.C. 102;

(3) The Government Printing Office;

(4) The Administrative Office of the U.S. Courts; and

(5) Independent establishments that are establishments in the executive branch, except for a government corporation, the U.S. Postal Service, or the Postal Rate Commission.

(d) *Agencies excluded.* This part does not apply to the agencies excluded by 5 U.S.C. 4301(1), which are as follows:

(1) The U.S. Postal Service;

(2) The Postal Rate Commission;

(3) The Central Intelligence Agency;

(4) The Defense Intelligence Agency;

(5) The National Security Agency;

(6) The General Accounting Office;

(7) Any government corporation; and

(8) Any agency having the principal function of conducting foreign intelligence or counterintelligence activities.

(e) *Employee coverage.* This part applies to all individuals employed in or under an agency but does not apply to the following employees:

(1) An employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less;

(2) An employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(3) An employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

(4) An individual in the Foreign Service of the United States;

(5) A physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans Administration, whose pay is fixed under Chapter 73 of title 38, U.S. Code except persons appointed under 38 U.S.C. 4104(3);

(6) An administrative law judge appointed under 5 U.S.C. 3105;

(7) An individual in the Senior Executive Service;

(8) An individual appointed by the President;

(9) An employee occupying a position in Schedule C as authorized under Part 213 of this chapter;

(10) A reemployed annuitant;

(11) A National Guard technician;

(12) An individual occupying a position in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period; and

(13) An individual occupying a position filled by Noncareer Executive Assignment under Part 305 of this chapter.

§ 432.103 Definitions.

In this part—

(a) "*Critical element*" means a component of a position consisting of one or more duties and responsibilities that contributes toward accomplishing organizational goals and objectives and that is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

(b) "*Current continuous employment*" means a period of service or employment immediately preceding an action under this part in the same or similar positions without a break of a workday.

(c) "*Opportunity to demonstrate acceptable performance*" means, except for employees covered by the Performance Management and Recognition System, the period of time required by 5 U.S.C. 4302(b)(6) during which the employee is given the opportunity to demonstrate acceptable performance prior to the agency's decision as to whether to propose reduction in grade or removal. For employees covered under the Performance Management and Recognition System, it means the period of time required by 5 U.S.C. 4302a(b)(6) during which the employee is given the opportunity to raise his or her level of performance to the fully successful level or higher.

(d) "*Reduction in grade*" means the involuntary assignment of an employee to a position at a lower classification or job grading level.

(e) "*Removal*" means the involuntary separation of an employee from employment with an agency.

(f) "*Same or similar positions*" means positions in which the duties performed require the same qualifications and would demonstrate the same degree of difficulty and responsibility as an individual's current position.

(g) "*Unacceptable performance*" means performance of an employee that fails to meet established performance standards in one or more critical elements of such employee's position.

§ 432.104 Opportunity to demonstrate acceptable performance.

(a) *Initiation of opportunity period.* Before proposing to reduce in grade or remove an employee under this part, the agency shall provide the employee an opportunity to demonstrate acceptable performance. This period may be initiated at any time during the performance appraisal cycle that the employee's performance in one or more critical elements becomes unacceptable. At the time that an agency identifies the critical element(s) for which performance is unacceptable, the employee must be informed of the performance standards that must be reached in order to be retained. If an employee is covered under the Performance Management and Recognition System, 5 U.S.C. 4302a(b)(6) requires an agency to provide written notice of such employee's unacceptable rating to the employee.

(b) *Length of the opportunity period.* An opportunity period shall be a period of time, commensurate with the duties and responsibilities of the employee's position, sufficient to allow the employee to show whether he or she can perform at the required level.

(c) *Assistance during the opportunity period.* Section 4302(b)(5) of title 5 of the U.S. Code requires that agency performance appraisal systems shall provide for assisting employees in improving unacceptable performance. Section 4302a(b)(5) of title 5 of the U.S. Code requires that for employees covered under the Performance Management and Recognition System, agency performance appraisal systems shall provide for assisting such employees in improving performance rated at a level below the fully successful level.

(d) *Consideration of medical condition.* (1) If the employee wishes the agency to consider any medical condition that may contribute to his or her unacceptable performance, he or she shall furnish acceptable medical documentation (as defined in Part 339 of this chapter) of the condition.

(2) An agency shall consider such documentation, whether received prior to or during the opportunity period, during the time allowed for an answer to a proposed reduction in grade or removal, or any time before the final agency decision.

(3) An agency may require or offer a medical examination in accordance with the criteria and procedures provided in Part 339 of this chapter.

(4) If the employee has 5 years of service or more, the agency shall provide information concerning disability retirement.

(5) Agencies shall be aware of the affirmative obligations of 29 CFR 1613.704, which requires reasonable accommodation of a qualified employee who is handicapped.

(e) *Agency decisions based on the results of the opportunity period.* (1) If, at the completion of the opportunity period, an agency determines that an employee has demonstrated performance of his or her critical elements at the minimally acceptable level or higher, the agency may not propose action under this part to reduce in grade or remove the employee.

(2) As required by § 430.405(j)(3), when an employee covered under the Performance Management and Recognition System improves to at least

the minimally acceptable level but not to the fully successful level, the employee, if not reassigned, shall be required to undergo an additional opportunity period to demonstrate performance at the fully successful level or higher.

(3) If, at the completion of the opportunity period, the agency determines that the employee's performance is unacceptable, it shall remove, reduce in grade, or reassign the employee.

§ 432.105 Procedures

(a) *Statutory requirements.* An employee whose reduction in grade or removal is proposed under this part is entitled to the procedures specified in 5 U.S.C. 4303 which are—

(1) A thirty day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical elements of the employee's position involved in each instance of unacceptable performance;

(2) Representation by an attorney or other representative;

(3) A reasonable time to answer orally and in writing; and

(4) A final written decision that specifies the instances of unacceptable performance on which the action is based. Unless proposed by the head of the agency, such written decision shall be concurred in by an employee who is in a higher position than the person who proposed the action.

(b) *Extension of notice period.* (1) Section 4303(b)(1)(A) of title 5 of the U.S. Code provides that an agency shall give an employee 30 days' advance written notice of a proposed reduction in grade or removal. Section 4303(b)(2) of title 5 of the U.S. Code provides that an agency may extend this advance notice period for a period not to exceed 30 days under regulations prescribed by the head of the agency and for a period beyond 30 days in accordance with regulations issued by OPM.

(2) If an agency needs to extend the notice period beyond the additional 30 days provided for in 5 U.S.C. 4303(b)(2), it may do so for the following reasons:

(i) To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;

(ii) To arrange for the employee's travel to make an oral reply to an appropriate agency officials;

(iii) To consider the employee's answer if an extension to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);

(iv) To consider specific positions to which the employee might be reassigned or reduced in grade if agency procedures require this or if it is necessary to consider reasonable accommodation of a handicapping condition; or

(v) To comply with a stay order by the Office of the Special Counsel of the Merit Systems Protection Board.

(3) If an agency believes that an extension of the notice period is necessary for another reason, it may request prior approval for such extension from the Chief, Appellate Policies Division, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(c) *Representation.* Section 4303(b)(1)(B) of title 5 of the U.S. Code provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or an employee whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his or her release from official duties.

(d) *Time limitation on use of instances of unacceptable performance.* Section 4303(c)(2) of title 5 of the U.S. Code provides that a decision to reduce in grade or remove for unacceptable performance may be based only on those instances of unacceptable performance that occurred during the 1-year period ending on the date of notice of proposed action.

(e) *Agency decision.* In arriving at its decision, the agency shall consider any answer of the employee and/or his or her representative furnished in response to the agency's proposal. Section 4303(c)(1) of title 5 of the U.S. Code provides that the decision shall be made within 30 days after expiration of the notice period provided for in 5 U.S.C. 4303(b)(1)(A). The agency shall deliver the written notice of its decision to the employee at or before the time the action will be effective. Such notice shall inform the employee of his or her appeal rights.

(f) *Applications for disability retirement.* Section 831.501(d) of title 5 of the Code of Federal Regulations provides that an employee's application for disability retirement shall not preclude or delay an otherwise appropriate personnel action. Section 831.1203 sets forth the basis under which an agency shall file an application for disability retirement on behalf of an employee.

§ 432.106 Appeal and grievance rights.

(a) *Appeal rights.* Section 4303(e) of title 5 of the U.S. Code provides that an employee in the competitive service or a preference eligible in the excepted service who has been removed or reduced in grade under this part is entitled to appeal the action to the Merit Systems Protection Board. Actions listed at § 432.102(b) are not covered by the provisions of this part, including the right to appeal to the Merit Systems Protection Board under 5 U.S.C. 4303(e).

(b) *Grievance rights.* Section 7121(e)(1) of title 5 of the U.S. Code provides that if removal or reduction in grade falls within the coverage of an applicable negotiated grievance procedure, an employee may elect to file a grievance under that procedure or file an appeal with the Merit Systems Protection Board but not both.

Comments and OPM's responses to the comments on the above initial February 23, 1987 proposed regulations follow:

Section 432.101 Statutory Authority.

Comment: One union recommended reprinting the applicable sections of the statute in the regulations, as had been done in the current version.

Response: OPM considered it desirable to publish the statutory provisions when the regulations were published for the first time after the passage of the Civil Service Reform Act. Since the statute is now widely available, there is less need for publishing its text in the regulations. Consistent with current OPM practice and in the interest of limiting the length of the CFR, applicable statutory provisions are cited but the text is not reprinted.

Section 432.102(a) Coverage.

Comment: One agency suggested that the section indicate that performance-based actions may also be taken under Part 752.

Response: This in effect is done by § 432.102(b)(11) which states that "A performance-based action taken under Part 752" is excluded from coverage under Part 432 and by the parenthetical statement at the end of § 432.101, Statutory Authority, which states that 5 U.S.C. Chapter 75 may also be used to take performance-based actions.

Section 432.102(b) Actions excluded.

Comment: One agency suggested that subsections be added to indicate that denials of within-grade increases and actions pertaining to reemployed annuitants are excluded under Part 432.

Response: The purpose of this section is to specify other types of reduction in

grade or removal actions that are not subject to Part 432. A within-grade increase is not such an action. On the other hand, reemployed annuitants are specifically mentioned as *employees* excluded under § 432.102(e).

Section 432.102(b) (4) and (5) Exclusion of actions based on minimally acceptable performance; unacceptable performance on a non-critical element

Comment: Four agencies and one union commented that inclusion of these actions in the list of exclusions implied that such actions could be taken under other authorities.

Response: OPM's original purpose for adding these exclusions was not to imply that they could or could not be effected under an authority other than Part 432. However, in order to reduce the confusion brought about by their listing in the proposed regulations, OPM proposes to delete these actions from the final regulations. It is noted here that reductions in grade and removal under this part may be taken only for *unacceptable* performance on one or more *critical* elements.

Section 432.102(b)(6) Exclusion of actions taken by Special Counsel.

Comment: One agency commented that our reference to excluding actions taken by the Office of the Special Counsel (except with respect to its own employees) was in error since that office has authority only to propose actions to the Merit Systems Protection Board who, in turn, may order appropriate action.

Response: The proposed language is revised to clarify that the actions excluded by this subsection are those taken by MSPB on recommendation by the Office of the Special Counsel.

Section 432.102(b)(14) Exclusion of termination of temporary or term promotions.

Comment: One agency and two unions commented that OPM should not say that the termination of a temporary or term promotion is not covered since OPM and MSPB had previously agreed that if a promotion were temporary the employee was entitled to adverse action procedures and could challenge his or her termination if the promotion lasted more than a specific period of time (2 years). The unions believe that the decision cited by OPM in its proposal, *Phipps v. Department of Health and Human Services*, 767 F.2d 895 (Fed. Cir. 1985), is not well-established and should be narrowly interpreted. The agency recommended that OPM make it clear that such a termination of a promotion would only be excluded from adverse action coverage if the employee was informed in advance of the temporariness of the promotion.

Response: With respect to the unions' comments, OPM notes that the original appeal right was a creation of the Civil Service Commission and was neither dictated nor reinforced by judicial decisions. OPM also notes that the MSPB has affirmed and applied *Phipps* in *Mosley v. Dep't of Navy*, 31 M.S.P.R. 689 (1986). With respect to informing the employee of the temporariness of a promotion before it takes place, OPM agrees that the employee should be on notice that the promotion is to be temporary, and proposes to make the recommended change.

Section 432.102(e) Employee coverage.

Comment: One agency suggested that this section be clarified to indicate that one year of current continuous employment in the same or similar position is also required for employees serving in positions for which there is not a probationary or trial period.

Response: OPM realizes that the law providing coverage for employees in the competitive service is somewhat confusing and not self-explanatory. The confusion arises because there are employees in the competitive service who serve in two types of appointment. The majority serve under career, career-conditional, or certain other nontemporary appointments which require a probationary or trial period of service. Of this group, only those employees who have yet to complete the necessary probationary or trial period, required either because their current appointment is their first period of Government service, or because they have been appointed from a register to a different position, are excluded from Part 432 protections. Once they complete the current probationary period, they do not have to serve another probationary period even after a break in Government service, unless they are again appointed from a register. See 5 CFR Part 315.) The definitions of "current continuous employment" and "similar positions" do not apply to this group. A much smaller group of competitive service employees serve in appointments (such as temporary appointments pending establishment of a register (TAPER), *status quo*, or special tenure appointments) which require no probationary or trial period. It is this second group of employees to which the regulatory definition of current continuous employment applies. The statute, 5 U.S.C. 4303(f)(1), intended to provide for coverage of this second group once the employees have completed 1 year of current *continuous* employment in the same or similar postions. It was not intended to require that all employees in the competitive service, including those who have completed the necessary probation or trial period, have a year of current continuous employment in the same or similar positions.

Section 432.103 Definitions.

Comment: One agency recommended that a definition of acceptable performance be created. Three unions and four agencies suggested that the term "current continuous employment" be clarified. Three agencies recommened changes to the definition of "same or similar position," three agencies suggested clarification of the term "opportunity to demonstrate acceptable performance," and six agencies suggested modifications to the term "unacceptable performance."

Response: Consistent with the purposes and context of this part, a defintion of acceptable performance is provided in the proposed final version of the regulations.

The definition of current continuous service has been revised to show that continuous employment means employment without a break in *Federal* service. Employment while in a leave or nonduty, nonpay status counts toward the completion of the period of Federal employment for purposes of this part. (See also discussion of current continuous employment under § 432.102(e), above.)

OPM agrees with the commenters that the definition of "similar positions," a term introduced in statute in lieu of the pre-CSRA term "same line of work" may be too narrow, and proposes to revise it to reflect that the duties and qualifications for the positions are close enough so that the incumbent could be readily interchanged between the two positions without undue interruption.

The defintion of unacceptable performance remains unchanged. It is the same as that provided at 5 U.S.C. 4301(3).

OPM proposes to revise the definition of "opportunity to demonstrate acceptable performance" to make clear that it is a reasonable chance for an employee to show that he or she can perform the requirements of the critical element(s) in question in an acceptable manner. Unlike the initial proposed regulations, the new definition is not automatically predicted on an employee's performance during a given period of time, *i.e.*, "opportunity period." This recognizes that an agency may afford an employee an opportunity to demonstrate acceptable performance in

different ways based upon the level or type of the employee's position as well as the level and type of his or her performance requirements. The separate reference to PMRS employees is not necessary in light of this revision.

Section 432.104 Opportunity to demonstrate acceptable performance.

(Note: The initial proposed regulations set out two separate sections: "Opportunity to demonstrate acceptable performance" and "Procedures". The proposed final regulations, consistent with the suggestion of one agency, clarify and combine the requirements of the two into a single section entitled "Agency response to unacceptable performance." The comments below refer to the items as they appeared in the initial proposed regulations.)

Section 432.104(a) Initiation of opportunity period.

Comment: One agency suggested that the requirement for a written performance rating as notification of unacceptable performance for a PMRS employee (5 U.S.C. 4302a(b)(6)) was unnecessarily rigid and cumbersome and not consistent with statutory intent. The agency suggested that notification of unacceptable performance be substituted. A second agency recommended that the regulations state that such notification is a formal rating of record.

Response: OPM proposes to revise the requirement for a written performance rating to clarify OPM's intention that the employee is entitled, under 5 U.S.C. 4302(b)(6), to *written* notification of unacceptable performance on one or more critical elements, although the written notification need not be in the form of a Rating of Record as defined at 5 CFR 430.404. In addition, as a conforming amendment to the regulations at this Part, OPM proposes to revise 5 CFR 430.404 to delete the provision that such notification must be a rating of record.

Section 432.104(b) Length of the opportunity period.

Comment: Two agencies and one union recommended that OPM specify the minimum or appropriate length of time that should be afforded an employee to demonstrate acceptable performance.

Response: OPM continues to believe that time frames for providing employees with reasonable opportunities to demonstrate acceptable performance can vary from case to case. Moreover, OPM has concluded that the reasonableness of an employee's opportunity to demonstrate acceptable performance, in many cases, should not be solely dependent upon the passage of a period of time, i.e., "opportunity period." Other factors such as the nature of the employee's assigned duties and performance requirements, the extent and nature of the employee's performance deficiencies, and the type of assistance provided to the employee will all contribute to determining how the opportunity to improve should be structured and applied. The law governing the employee's opportunity to demonstrate acceptable performance (5 U.S.C. 4302(b)(6)) is not time-driven and, therefore, it would be inappropriate to require that the employee's opportunity always be defined in terms of periods of time. For these reasons minimum or appropriate lengths of time for employees to demonstrate acceptable performance have not been provided for in the proposed final regulation. In addition, use of the term "opportunity period," as related to the section 4302(b)(6) requirement, has been eliminated in these regulations.

Section 432.104(c) Assistance during the opportunity period.

Comment: One union suggested that more emphasis be placed in the regulation on the need for the agency to provide assistance, including specific examples of such assistance prior to initiating a removal or reduction in grade action. One agency suggested that the regulations clarify that the nature of assistance may vary according to the employee's position and length of service. One agency recommended that reference be made to the statutory requirements of 5 U.S.C. 4302 and 4302a which address assistance given to employees with unacceptable performance.

Response: The proposed final § 432.104 indicates, within the context of the requirements to notify employees of their unacceptable performance and provide them an opportunity to improve, that the agency shall also offer assistance in improving performance. The proposed final regulation does not specify the types of assistance to be provided because such assistance will vary depending on the type and level of the employee's position, the level of the employee's performance requirements and the nature of the employee's performance deficiencies.

Section 432.104(d) Consideration of medical condition.

Comment: Three agencies and one union recommended that the regulations specify time limits for an employee to submit medical documentation in connection with unacceptable performance. Three agencies recommended that the requirement to provide information about disability retirement be limited to those instances when an employee has requested consideration of a medical condition. Two agencies also recommended that specific reference be made to eligibility requirements under the Federal Employees Retirement System as well as the Civil Service Retirement System.

Response: Recognizing the variety of circumstances in which medical documentation might be presented, the proposed final regulations provide, at § 432.104(c)(2)(i), that medical documentation should be submitted as soon as possible before the agency's final decision on whether or not to remove or reduce in grade the employee for unacceptable performance. In addition, the proposed final regulations require agencies to provide information about disability retirement under the Federal Employees Retirement System or the Civil Service Retirement System, as appropriate, when an employee requests consideration of a medical condition in connection with his or her unacceptable performance.

Section 432.104(e) Agency decisions based on the results of the opportunity period.

Comment: Nine agencies and two individuals sought further clarification or made suggestions for change in this section. Five commenters asked for clarification regarding the appropriate course of action when a PMRS employee who is given the opportunity to demonstrate fully successful performance raises his or her performance only to the minimally successful level. Two agencies commented that the proposed language was overly restrictive in that it appeared to prevent agencies from initiating action against employees who demonstrate acceptable performance by the completion of the opportunity to improve but then fall back to unacceptable performance afterwards. Their view is that employees, once given the opportunity to improve, must improve to and sustain their performance at an acceptable level. One agency suggested that in determining whether a reduction in grade or removal action is to be taken, the focus should be on the employee's performance during the opportunity to improve. An individual suggested that, for purposes of determining whether a reduction in grade or removal is appropriate, emphasis should be placed on whether, once given the opportunity to improve, the employee continues his or her unacceptable performance. Three agencies commented that the language in § 432.104(e)(3) requiring that agencies

must reduce in grade, remove or reassign employees whose performance is unacceptable, after being given the opportunity to improve, is inconsistent with the statutory authority in Chapter 43 and is at odds with prevailing case law pertaining to performance based actions.

Response: The volume and diversity of comments and suggestions on this section suggest to OPM that its policies need to be more fully and clearly stated. As a result the proposed final regulations clarify that:

(1) Consistent with 5 U.S.C. 4302a(b)(6), the proposed final regulations provide that, if the employee who is performing unacceptably is covered by the PMRS, he or she shall be provided a reasonable opportunity to demonstrate performance at the "fully successful" level or higher. As a conforming amendment, regulations at 5 CFR 430.405(j)(3) will be revised to delete the requirement that a PMRS employee who, during an opportunity period, improves to performance level two (minimally acceptable) but not level three (fully successful), if not reassigned, shall undergo an additional opportunity period. These changes, in effect, require that such a PMRS employee be maintained in an "opportunity to improve" status until performance either improves to level three or reverts to level one (unacceptable). If the employee's performance reverts to level one, action may be proposed to remove or reduce the employee in grade.

(2) In keeping with the statutory language and Congressional intent that Chapter 43 provide authority for agencies to reduce in grade or remove employees who "continue to have unacceptable performance * * * after an opportunity to demonstrate acceptable performance," 5 U.S.C. 4302(b)(6), the proposed final regulations clarify that an employee whose performance becomes unacceptable may be reduced in grade or removed unless performance improves to and is sustained at an acceptable level, once the employee is provided a reasonable opportunity to demonstrate acceptable performance. The initial proposed regulation at § 432.104(e) did not intend to prevent agencies from initiating action in those instances where an employee's performance in the critical elements in question returns to being unacceptable subsequent to the employee's demonstration of acceptable performance once given the opportunity to improve.

(3) OPM agrees that circumstances may arise where the agency legitimately considers alternatives other than reduction in grade or removal when an employee's performance is unacceptable. Thus, the proposed final regulations are revised to indicate that an agency *may* propose a reduction in grade or removal if an employee's performance continues to be unacceptable after being given an opportunity to improve.

Section 432.105 Procedures.

(**Note:** In the proposed final regulations, this section has been combined with initial proposed § 432.104 to form a new § 432.104 entitled "Agency response to unacceptable performance." The comments below refer to the sections as they appeared in the initial proposed regulations.)

Section 432.105(a) Statutory requirements.

Comment: Two agencies suggested clarification regarding concurrence in the dicision to remove or reduce in grade by "an employee in a higher position."

Response: OPM believes that the language, which is taken from the statute at 5 U.S.C. 4303(b)(1)(D)(ii), is self explanatory and that alternative language might cause confusion regarding the terminology and possibly be inconsistent with the flexibility intended for agencies by the statute. Therefore, we have retained the broad statutory language in the proposed final regulations.

Section 432.105(b) Extension of notice period.

Comment: Six agencies and one union suggested clarification regarding the situations for which agencies could grant extensions to the 30 day advance notice period preceding the Part 432 action without prior OPM approval. One agency suggested that the list could be subject to misinterpretation and result in procedural errors. One union suggested that such extensions are subject to negotiation in collective bargaining agreements and that these regulations would interfere with that process.

Response: The proposed final regulations are revised to clarify the type of situations where agencies can themselves grant extensions without prior OPM approval. OPM has listed the reasons for which prior approval is not necessary consistent with those meritorious situations most frequently requested and approved by OPM in the past. OPM does not believe that extension of the advance notice period, which is almost always to allow the employee additional time to respond to the agency's charges, will result in harmful procedural error. It is not intended or expected that the revisions will limit negotiations on when an agency should grant or request an extension under the requirements of this Part.

Section 432.105(c) Representation.

Comment: One union recommended that the final regulations indicate that "the terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit." It pointed out that such language governing representation during the processing of an action is included in the current regulations. The union recommended that the language not be deleted as in the proposed regulations.

Response: OPM continues to believe that the deleted language was misplaced in this section and could be read incorrectly to narrow representational rights for employees against whom an action based on unacceptable performance is proposed. By its citation of this section, the regulation could be read to mean that bargaining unit employees may only be represented by their union representatives after an action to remove or reduce in grade is proposed by the agency. However, under 5 U.S.C. 4303(b)(1)(B), all employees against whom such action is proposed have the right to "an attorney or other representative" (which of course can include a union representative). Therefore, the employee may choose a representative of his choice in responding to an agency's proposal to reduce in grade or remove. Because 5 U.S.C. 7114(a)(5) does apply to representation of employees covered by a negotiated bargaining agreement for the purposes of challenging (i.e., grieving) an agency's action, OPM proposes to delete reference to 5 U.S.C. 7714(a)(5) in this section and add it to § 432.105(b) on grievance rights.

Section 432.105(e) Agency decision.

Comment: One union recommended that notice of the agency's final decision be delivered at least two weeks prior to the effective date if the employee is to be reduced in grade or removed.

Response: The statute and regulations already provide for a minimum of 30 days' advance notice of the agency's proposed action. The recommendation would go further than the statute and regulation and require an advance notice of an agency's final decision under certain conditions. Because the recommendation is inconsistent with the statutory requirements of 5 U.S.C. 4303, it has not been included in the proposed final regulations.

Section 432.106 Appeal and grievance rights.

Comment: Three agencies suggested that the language be revised to make clearer which employees have appeal and grievance rights.

Response: OPM agrees that setting forth in one place the categories of employees who have appeal and grievance rights will make it easier for agencies to understand their rights and obligations under law. This has been done in this section. In contrast, 5 U.S.C. 4303(f) sets forth those categories of employees who are not covered by 5 U.S.C. 4303 and therefore may not appeal a performance-based removal or reduction in grade to the Merit System Protection Board. The exclusions in this provision of law apply with equal force to employees covered by negotiated grievance procedures established under 5 U.S.C. 7121.

Agency records (Newly added section 432.106).

Comment: These agencies and two unions recommended that the requirements for records maintenance in the current regulations be retained.

Response: OPM agrees with the importance of the current regulation's stated records maintenance and retention requirements. Therefore the proposed final regulations include requirements for records maintenance substantially the same as those in the current regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have significant economic impact on a substantital number of small entities because it applies only to Federal employees.

List of Subjects in 5 CFR Parts 430 and 432

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend Part 430 and revise Part 432 of Title 5 of the Code of Federal Regulations as follows:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for Part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

2. In § 430.404, the definition of "Rating of record" is revised to read as follows:

§ 430.404 Definitions.

* * * * *

"Rating of record" means the summary rating, under 5 U.S.C. 4302a, required at the time specified in the performance management plan or at such other times as the plan specifies for special circumstances.

* * * * *

3. In § 430.405, paragraph (j)(3) is revised to read as follows:

§ 430.405 Agency performance appraisal systems.

* * * * *

(j) * * *

(3) If, at the conclusion of the opportunity to improve referred to in paragraph (j)(1) of this section, the employee's performance is "Unacceptable," the agency must initiate reassignment, reduction in grade, or removal, subject to the provisions of 5 U.S.C. 4303.

* * * * *

4. Part 432 is revised to read as follows:

PART 432—REDUCTION IN GRADE AND REMOVAL BASED ON UNACCEPTABLE PERFORMANCE

Sec.

Authority: 5 U.S.C. 4305.

§ 432.101 Statutory authority.

This part applies to reduction in grade and removal of employees based solely on unacceptable performance. 5 U.S.C. 4305 authorizes the Office of Personnel Management to prescribe regulations to carry out the purposes of Title 5, Chapter 43, including 5 U.S.C. 4303, which covers agency actions to reduce in grade or remove employees for unacceptable performance. (The provisions of 5 U.S.C. 7501 *et. seq.*, may also be used to reduce in grade or remove employees. See 5 CFR Part 752.)

§ 432.102 Coverage.

(a) *Actions covered.* This part covers reduction in grade and removal of an employee based soley on unacceptable performance.

(b) *Action excluded.* This part does not apply to the following:

(1) The reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2); (2) The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less;

(3) The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(4) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C 1206;

(5) An action taken under 5 U.S.C 7521 against an administrative law judge;

(6) An action taken under 5 U.S.C. 7532 in the interest of national security;

(7) An action taken under a provision of statute, other than one codified in title 5 of the U.S. Code , which excepts the action from the provisions of title 5 of the U.S. Code;

(8) A removal from the Senior Executive Service to a civil service position outside the Senior Executive Service under Part 359 of this chapter;

(9) A reduction-in-force governed by Part 351 of this chapter;

(10) A volutary action by the employee;

(11) A performance-based action taken under Part 752 of this chapter;

(12) An action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay if the agency informed the employee that it was to be limited duration; and

(13) A termination in accordance with term specified as conditions of employment at the time the appointment was made.

(c) *Agencies covered.* This part applies to agencies specified at 5 U.S.C. 4301(1) which are—

(1) The executive departments listed at 5 U.S.C. 101;

(2) The military departments listed at 5 U.S.C. 102;

(3) Independent establishments in the executive branch as described at 5 U.S.C. 104, except for a Government corporation;

(4) The Administrative Office of the U.S. Courts; and

(5) The Government Printing Office.

(d) *Agencies excluded.* This part does not apply to—

(1) The agencies excluded by 5 U.S.C. 4301(l) which are:

(i) A Government corporation;

(ii) The Central Intelligence Agency;

(iii) The Defense Intelligence Agency;

(iv) The National Security Agency;

(v) Any Executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities; and

(vi) The General Accounting Office;

(2) The U.S. Postal Service; and

(3) The Postal Rate Commission.

(e) *Employee coverage.* This part applies to individuals employed in or under a covered agency as specified at 5 CFR 432.102(c) except:

(1) An employee in the competitive service who is serving a probationary or trial period under an initial appointment;

(2) An employee in the competitive service serving in an appointment that requires no probationary or trial period, who has not completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(4) An employee outside the United States who is paid in accordance with local native prevailing wage rates of the area in which employed;

(5) An individual in the Foreign Service of the United States;

(6) A physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans Administration, whose pay is fixed under Chapter 73 of title 38, U.S. Code, except persons appointed under 38 U.S.C. 4104(3);

(7) An administrative law judge appointed under 5 U.S.C. 3105;

(8) An individual in the Senior Executive Service;

(9) An individual appointed by the President;

(10) An employee occupying a position in Schedule C as authorized under Part 213 of this chapter;

(11) A reemployed annuitant;

(12) A National Guard technician;

(13) An individual occupying a position in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12 month period;

(14) An individual occupying a position filled by Noncareer Executive Assignment under Part 305 of this chapter; and

(15) A manager or supervisor returned to his or her previously held grade pursuant to 5 U.S.C. 3321 (a)(2) and (b).

§ 432.103 Definitions.

For the purposes of this part—

(a) *"Acceptable performance"* means performance that meets established performance standards in the critical element(s) in question.

(b) *"Critical element"* means a component of a position consisting of one or more duties and responsibilities that contributes toward accomplishing organizational goals and objectives and that is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

(c) *"Current continuous employment"* means a period of employment or service immediately preceding an action under this part in the same or similar positions without a break in Federal civilian employment of a workday.

(d) *"Opportunity to demonstrate acceptable performance"* means a reasonable chance for the employee whose performance has been determined to be unacceptable in one or more critical elements to demonstrate acceptable performance in the critical element(s) in question.

(e) *"Reduction in grade"* means the involuntary assignment of an employee to a position at a lower classification or job grading level.

(f) *"Removal"* means the involuntary separation of an employee from employment with an agency.

(g) *"Similar positions"* mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbents could be interchanged without significant training or undue interruption to the work.

(h) *"Unacceptable performance"* means performance of an employee that fails to meet established performance standards in one or more critical elements of such employee's position.

(i) *Written notice of unacceptable rating"* means, for the purposes of this part, an agency's written notification to an employee that his or her performance is unacceptable in one or more critical elements.

§ 432.104 Agency response to unacceptable performance.

(a) *Notification of unacceptable performance.* At any time during the performance appraisal cycle that an employee's performance becomes unacceptable in one or more critical elements, the agency may notify the employee of the critical element(s) for which performance is unacceptable; inform the employee of the performance level or standard that must be reached in order to be retained in his or her position; and inform the employee that unless his or her performance improves to and is sustained at an acceptable level, the employee may be reduced in grade or removed. (If the employee is covered under the Performance Management and Recognition System, the agency shall provide written notice of the employee's unacceptable rating as required by 5 U.S.C. 4302a(b)(6).)

(b) *Opportunity to demonstrate acceptable performance.* For each critical element in which the employee's performance is unacceptable, the agency shall afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position. (If the employee is covered under the Performance Management and Recognition System, the employee shall be provided a reasonable opportunity to demonstrate performance at the "fully successful" level or higher as required by 5 U.S.C. 4302a(b)(6).) As part of the opportunity to demonstrate acceptable performance, the agency shall offer assistance to the employee in improving unacceptable performance.

(c) *Proposed action based on unacceptable performance.* (1) The agency may propose a reduction in grade or removal under this part if:

(i) When given the opportunity to demonstrate acceptable performance under 5 CFR 432.104(b), the employee fails to demonstrate acceptable performance in the critical element(s) identified in 5 CFR 432.104(a); or

(ii) Once having been given the opportunity to demonstrate acceptable performance pursuant to § 432.104(b), and subject to the one year limitation provided at 5 U.S.C. 4303(c)(2)(A), the employee fails to sustain acceptable performance in the critical element(s) identified when the employee was notified fo unacceptable performance pursuant to § 432.104(a).

(2) An employee whose reduction in grade or removal is proposed under this part is entitled to:

(i) *Advance notice.* (A) A 30 day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of unacceptable performance. These instances must have occurred within one year preceding the notice. An

agency may extend this advance notice period for a period not to exceed 30 days under regulations prescribed by the head of the agency for any reason. An agency may extend this notice period for an additional 30 days without prior OPM approval for the following reasons:

(1) To obtain and or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;

(2) To arrange for the employee's travel to make an oral reply to an appropriate agency official, or the travel of an agency official to hear the employee's oral reply;

(3) To consider the employee's answer if an extension to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);

(4) To consider reasonable accommodation of a handicapping condition;

(5) If agency procedures so require, to consider positions to which the employee might be reassigned or reduced in grade; or

(6) To comply with a stay ordered by a member of the Merit Systems Protection Board under 5 U.S.C. 1208(b).

(B) If any agency believes that an extension of the notice period is necessary for another reason, it may request prior approval for such extention from the Chief, Employee Relations Division, Office of Employee and Labor Relations, Personal Systems and Oversight Group, Office of Personnl Management, 1900 E. Street, NW., Washington, DC 20415.

(ii) *Opportunity to answer.* A reasonable time to answer the agency's notice of proposed action orally and in writing. If the employee wishes the agency to consider any medical condition that may have contributed to his or her unacceptable performance, he or she shall furnish acceptable medical documentation (as defined in Part 339 of this chapter) of the condition as soon as possible, but before the agency decision. In considering the employee's medical condition, the agency—

(A) May require or offer a medical examination in accordance with the criteria and procedures provided in Part 339 of this chapter; and

(B) Shall be aware of the affirmative obligations of 29 CFR 1613.704.

(iii) *Representation.* Representation by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position or an employee whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his or her release from official duties.

(iv) *Final written decision.* A final written decision by the agency that specifies the instances of unaccepatable performance by the employee on which the action is based. Unless proposed by the head of the agency, such written decision shall be concurred in by an employee who is in a higher position than the person who proposed the action. In arriving at its decision, the agency shall consider any answer of the employee and/or his or her representative furnished in response to the agency's proposal. The decision shall be made within 30 days after expiration of the advance notice period. The agency shall issue written notice of its decision to the employee at or before the time the action will be effective. Such notice shall inform the employee of his or her appeal or grievance rights. A decision to reduce in grade or remove an employee for unacceptable performance may be based only on those instances of unacceptable performance that occurred during the 1 year period ending on the date of notice of proposed action. If the employee had previously requested consideration of a medical condition in connection with his or her unacceptable performance and has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System at the time the agency's decision is issued, the agency shall provide information concerning how to apply for disability retirement. As provided at 5 CFR 831.501(d), an employee's application for disability retirement shall not preclude or delay any other appropriate personnel action.

§ 432.105 Appeal and grievance rights.

(a) *Appeal rights.* Employees covered under 5 CFR 432.102(e) who have been removed or reduced in grade under this part may appeal to the Merit Systems Protection Board if they are:

(1) In the competitive service and have completed a probationary or trial period;

(2) In the competitive service in an appointment which is not subject to a probationary or trial period, and have completed 1 year of current continuous employment in other than a temporary appointment of 1 year or less; or

(3) Preference eligibles in the excepted service who have completed one year of current continuous employment in the same or similar position(s).

(b) *Grievance rights.* (1) A bargaining unit employee covered under 5 CFR 432.102(e) who has been removed or reduced in grade under this part may file a grievance under a applicable negotiated grievance procedure if the removal or reduction in grade action falls within its coverage (*i.e.*, is not excluded by the parties to the collective bargaining agreement); and

(i) The employee is in the competitive service and has completed a probationary or trial period; or

(ii) The employee is in the competitive service in an appointment which is not subject to a probationary or trial period, and has completed one year of current continuous employment in other than a temprary appointment of one year or less; or

(iii) The employee is a preference eligible in the excepted service who has completed one year of current continuous service in the same or similar positions.

(2) 5 U.S.C. 7114(a)(5) and 7121(b)(3), and the terms of an applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit who grieve a matter under this section through the negotiated grievance process.

(c) *Election of forum.* As provided at 5 U.S.C. 7121(e)(1), a bargaining unit employee who by law may file an appeal or a grievance, and who has exercised his or her option to appeal an action taken under this part to the Merit Systems Protection Board, may not also file a grievance on the matter under a negotiated grievance procedure. Likewise, a bargaining unit employee who has exercised his or her option to grieve an action taken under this part may not also file an appeal with the Merit System Protection Board on the matter.

§ 432.106 Agency records.

(a) *When the action is effected.* The agency shall preserve all relevant documentation concerning a reduction in grade or removal which is based on unacceptable performance and make it available for review by the affected employee or his or her representative. At a minimum, the agency's records shall consist of a copy of the notice of proposed action, the answer of the employee when it is in writting, a summary there of when the employee makes an oral reply, the written notice of decision and the reasons therefore, and any supporting material including documentation regarding the opportunity afford the employee to demonstrate acceptable performance.

(b) *When the action is not effect.* As provided at 5 U.S.C. 4303(d), if, because of performance improvement by the employee during the notice period, the

employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for one year from the date of the advance written notice provided in accordance with § 432.104(c)(2)(i) of this part, any entry or other notation of the unacceptable performance for which the action was proposed shall be removed from any agency record relating to the employee.

[FR Doc. 88-22772 Filed 10-3-88; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002 and 1004

[Docket Nos. AO-14-A62, A0-71-A77 and AO-160-A65; DA-88-105]

Milk in the New England, New York-New Jersey and Middle Atlantic Marketing Areas; Supplemental Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Supplemental notice of public hearing.

SUMMARY: This supplemental notice announces the reconvening of the hearing which began on June 27, 1988, in Syracuse, New York, to consider proposals to amend the New England, New York-New Jersey and Middle Atlantic milk orders. Additional testimony will be receive on a number of proposals concerning payments to producers that were listed in the initial hearing notice. Also, this supplemental notice adds for consideration several additional proposals of the National Farmers Organization that would require handlers to pay producers for milk on a more current and frequent basis under the New York-New Jersey and Middle Atlantic orders. Consideration of these proposals at the hearing were ordered by the U.S. District Court for the District of Columbia.

DATE: The hearing will be held at 1:30 p.m. on November 14, 1988.

ADDRESS: The hearing will be held at the Holiday Inn, Independence Mall, 400 Arch Street (4th & Arch), Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

This notice is supplemental to the notice of hearing which was issued on June 7, 1988, and published in the **Federal Register** on June 10, 1988 (53 FR 21825). Notice is hereby given that the hearing that was recessed in Syracuse, New York, on July 21, 1988, by the Administrative Law Judge designated to hold said hearing and preside thereof, will reconvene in session at 1:30 p.m., November 14, 1988, at the Holiday Inn, Independence Mall, 400 Arch Street (4th & Arch), Philadelphia, Pa. 19106. At the reconvened hearing, additional testimony will be received on proposed amendments nos. 47 through 57 and 69, as listed in the initial hearing notice (53 FR 21825), and to additional proposed amendments, as noted below, to the tentative marketing agreements and to the orders regulating the handling of milk in the New England, New York-New Jersey and Middle Atlantic marketing areas.

The hearing originally was called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-647), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), and said hearing is being reconvened under the same authority and rules.

The purpose of the reconvened hearing is to receive additional evidence with respect to the economic and marketing conditions which relate to the previously announced proposed amendments nos. 47 through 57 and 69 and to the additional proposed amendments hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small businesss" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1001, 1002 and 1004

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Parts 1001, 1002 and 1004 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

The additional proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the National Farmers Organization, Inc.

The following 5 proposals would establish two partial payments, and rules for final payment and advance payment to the producer-settlement fund under the New York-New Jersey and Middle Atlantic orders.

Proposal No. 70

Revise the introductory text of § 1002.50a Class prices, to read as follows:

Section 1002.50a Class prices.

For pool milk received during each month from dairy farmers or cooperative associations of producers, each handler shall pay per hundredweight not less than the price set forth in this section, subject to the differentials and adjustments in §§ 1002.51 and 1002.81. Any handler who purchases or receives milk during any month from a cooperative association of producers but does not operate the plant or unit receiving this milk from producers shall pay the cooperative association on or before the 25th day of the month at not less than 105 percent of the prior month's lowest class price for milk received from such cooperative during the first 10 days of the month, and shall pay the cooperative association on or before the 5th day of the following month at not less than 105 percent of the prior month's lowest class price for milk received from such cooperative during the 11th to the 20th day of the prior month, and shall pay the cooperative association on or before the 15th day of the following month the balance due for milk received during the month from such cooperative at not less than the class prices pursuant to this section subject to the differentials and

adjustments set forth in §§ 1002.51 and 1002.81 applicable at the plant at which the milk is first received from the cooperative association. Such payments to a cooperative association shall be deemed not to have been made until the payments have been received by the cooperative association.

* * * * *

Proposal No. 71

In § 1002.80 Time and rate of payments, redesignate paragraphs (a) and (b) as (c) and (d) and revise, add new paragraphs (a) and (b) and redesignate paragraphs (c) through (f) as paragraphs (e) through (h), to read as follows:

Section 1002.80 Time and rate of payments.

(a) On or before the 27th day of the month, each handler shall make payment to each producer for milk received from such producer during the first 10 days of the month at not less than 105 percent of the prior month's lowest class price.

(b) On or before the 7th day of the month, each handler shall make payment to each producer for milk received from such producer during the 11th to the 20th day of the preceding month at not less than 105 percent of the prior month's lowest class price.

(c) On or before the 17th day of the month, each handler shall make payment to each producer the balance due for all milk received from such producer during the preceding month at not less than the uniform price for such month, subject to the following adjustments:

* * * * *

(d) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk, each handler, on or before the second day prior to the date on which the payments are otherwise due individual producers, shall pay the cooperative association for milk received during the month from the producer-members of such association an amount equal to not less than the total amount otherwise due such producer-members as determined pursuant to paragraphs (a), (b) and (c) of this section.

* * * * *

Proposal No. 72

Revise the first sentence of § 1002.85 Payments to the producer-settlement fund to provide for an advance payment into the fund as follows:

Section 1002.85 Payments to the producer-settlement fund.

On the first day of each month each handler shall make payment to the market administrator equal to 50 percent of the handler's prior months producer-settlement fund obligation; and, on or before the 21st day of each month each handler shall make final payment to the market administrator of the difference, if any, between what was paid in advance and the debit balance of such handler shown on the last statement of account rendered pursuant to § 1002.84. * * *

Proposal No. 73

In § 1004.73 Payments to producers and to cooperative associations, redesignate paragraphs (a)(1), (a)(2), and (d)(2) as (a)(2), (a)(3) and (d)(3) and revise, add new paragraphs (a)(1) and (d)(2), and revise the introductory text of paragraphs (a) and (e) and paragraph (d)(1) to read as follows:

Section 1004.73 Payments to producers and to cooperative associations.

(a) Change the reference to paragraphs "(a)(1) and (2)" to read paragraphs "(a)(1), (2) and (3)".

(1) On or before the 27th day of the month at not less than 105 percent of the prior month's lowest class price for his deliveries of producer milk during the first 10 days of the month;

(2) On or before the 7th day of the month, at not less than 105 percent of the prior month's lowest class price for his deliveries of producer milk during the 11th to the 20th day of the preceding month; and

(3) On or before the 17th day of the month at not less than the uniform price for base milk computed pursuant to $1004.61(b) with respect to base milk received from such producer and not less than the uniform price for excess milk computed pursuant to §1004.61(b) for excess milk received from such producer, subject to the following adjustments:

(i) * * *

(ii) Partial payments made pursuant to paragraphs (a)(1) and (a)(2) of this section;

* * * * *

(d) * * *

(1) Change "15" days to "10" days.

(2) A partial payment for milk received during the 11th to the 20th day of the preceding month at the rate specified in paragraph (a)(2) of this section; and

* * * * *

(e) Change "(a)(2)" to "(a)(3)".

* * * * *

Proposal No. 74

Revise the introductory text of § 1004.71 Payments to the producer-settlement fund to provide for an advance payment as follows:

Section 1004.71 Payments to the producer-settlement fund.

On the first day of each month each handler shall make payment to the market administrator equal to 50 percent of the handler's prior months producer-settlement fund obligation; and, on or before the 15th day of each month the handler shall make final payment to the market administrator of the difference, if any, between what was paid in advance and the amount by which the total amount specified in paragraph (a) of this section exceeds the amounts specified in paragraph (b) of this section:

* * * * *

Copies of this supplemental notice of hearing and the order may be procured from the Market Administrators of each of the aforesaid marketing orders or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Division, Agricultural Marketing Service (Washington Office only)

Office of the Market Administrator, New England, New York-New Jersey and Middle Atlantic Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on September 29, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-22832 Filed 10-3-88; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1772

[REA Bulletins 345–150 et al]

Telephone Standards and Specifications; Construction of Direct Buried Plant, REA Form 515a, et al.

AGENCY: Rural Electrification Administration, USDA.
ACTION: Proposed rules.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications by issuing revised Bulletins: 345–150, Specifications and Drawings for Construction of Direct Buried Plan, REA Form 515a; 345–151, Specifications and Drawings for Conduit and Manhole Construction, REA Form 515c; 345–152, Specifications and Drawings for Underground Cable Installation, REA Form 515d; 345–153, Specifications and Drawings for Pole Lines and Aerial Cables, REA Form 515f; and 345–154, Specifications and Drawings for Service Entrance and Station Protector Installation, REA Form 515g. The latest revision of these specifications was September 1979. Since that date, significant changes have occurred within the telephone industry, including changes in construction materials, engineering designs and procedures, testing requirements and construction methods. There is a need to revise the 515 forms to incorporate these changes into the outside plant specifications. The major changes are the addition of new construction units for (1) buried filled fiber optic cable, (2) aerial filled optic cable, (3) aerial filled cable, (4) fiber optic splicing, (5) airial, buried and underground splice closures and organizers for fiber optic cables, (6) network interface devices, (7) handholes, and (8) underground fiber optic cable. See the Background section of Notice for a more detailed lising of changes. These actions will make it possible for REA telephone borrowers to continue to provide their subscribers with the most modern and efficient telephone service.

DATE: Public comments must be received by REA no later than November 3, 1988.

ADDRESS: Submit written comments to William W. Kelly, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500.

Copies of these documents are available upon request from the address indicated above. Interested persons are invited to submit comments on these actions. All written submissions made pursuant to these actions will be made available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250–1500, telephone (202) 382–8667. The Draft Regulatory Impact Analysis describing the options considered in developing these proposed rules and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 *et seq.*), REA proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications by issuing revised Bulletins: 345–150, Specifications and Drawings for Construction of Direct Buried Plant, REA Form 515a; 345–151, Specifications and Drawings for Conduit and Manhole Construction, REA Form 515c; 345–152, Specifications and Drawings for Underground Cable Installation, REA Form 515d; 345–153, Specifications and Drawings for Pole Lines and Aerial Cables, REA Form 515f; and 345–154, Specifications and Drawings for Service Entrance and Station Protector Installation, REA Form 515g. This incorporation by reference was approved by the Director of the Federal Register on December 30, 1983.

These proposed actions have been reviewed in accordance with Executive Order 12291, Federal Regulation. These actions will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major."

These actions do not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 *et seq.* [1976]) and, therefore, does not require an environmental impact statement or an environmental assessment.

This regulation contains no information or record keeping requirement which requires approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*)

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the Final Rule related to Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures and requirements for adminstering its loan and loan guarantee programs and the security instruments which provide for and secure REA financing. In the bulletin series, REA issues standards and specifications for the construction of telephone facilities with REA loan funds. REA is proposing to review REA Bulletins 345–150, 345–151, 345–152, 345–153, and 345–154. These specifications were last revised in September 1979. Since that time there have been many technical changes in telecommunications. New construction materials, such as fiber optic cable, filled aerial cable, and network interface devices, have been introduced. These new materials require new construction and installation specifications. There have also been changes in testing and grounding requirements and construction techniques. Following is a list of the main changes in each of the specifications:

1. REA Form 515a. Specifications and Drawings for Construction of Direct Buried Plan:

a. Addition of larger capacity buried plant pedestals and more optional accessory items for all sizes of pedestals.

b. Inclusion of an extra-large serving area interface cabinet and additional accessory options for all size cabinets.

c. Elimination of the BFCT, Trenched Filled Cable and Wire Assembly Unit. Proved a suffix "T" to be BFC for identification of buried filled cable which will be placed at the specified depth by trenching only.

d. Inclusion of suffix "P" to the BFC unit for identification of predesignated

buried filled cable that will be very difficult to bury.

e. Provision for suffix "HIC" to the BFC unit to indicate screened cable designated for TIC carrier systems.

f. Inclusion of assembly units for the direct burial of filled fiber optic cable.

g. Inclusion of an assembly unit for the splicing of fiber optic cables.

h. Provisions for the use of mini loading coils.

i. Provisions for designating diameter and length of rod, including use of suffix "S" to identify sectional ground rods related to housing ground assemblies.

j. Establishment of (a) a housing ground assembly unit, BM2B, for the installation of a bonding connector bracket within an existing housing and (b) an existing facility bonding unit, BM2C for bonding new cables in existing facilities.

k. Clarification of ripping unit, BM76, to include multiple passes, if necessary to achieve required depth.

l. Provisions for a suffix "O" to the HB unit to identify a buried splice closure for filled fiber optic cable, including the fiber organizer.

m. Clarification of the definition of the HC-Cable Splicing Unit.

n. Elimination of the use of a refraction seismograph in determining the soil composition for burying cable by plowing, ripping, and trenching.

2. REA Form 515c, Specifications and Drawings for Conduit and Manhole Construction:

a. Establishment of a Section UH—Handhole Assembly Unit (Pedestrian Traffic only).

b. Requirement that a test mandrel be pulled through all ducts of a completed section of conduit to ensure proper alignment.

c. Provision allowing precast manholes and collars as an acceptable alternative to poured manholes and brick collars.

3. REA Form 515d, Specifications and Drawings for Underground Cable Installation.

a. Clarification of the definition of the HC-Cable Splicing Unit.

b. Establishment of a Section HO—Fiber Optic Splicing Assembly Units.

c. Combining Sections HU and HUF into a new HU—Underground Splice Closure Assembly Units and elimination in the new HU unit of the distinction between straight and straight-branch type closures.

d. Provisions under the new HU unit options, which are identified by suffixes, for a filled splice closure, a filled fiber optic splice closure with fiber organizer and a pressurized splice closure.

e. Substitution in the new HU unit for sizing purpose, cable pair count and gauge in place of cable diameter and closure volume.

f. Provisions for suffixes "H" and "HIC" in Sections U and UF to indicate screened cables for T1 and T1C carrier systems.

g. Provisions for the use of mini loading coils.

h. Establishment of a Section UO—Underground Filled Fiber Optic Cable Assembly Units.

4. REA Form 515f, Specifications and Drawings for Construction of Pole Lines and Aerial Cables:

a. Establishment of a Section CO—Aerial Filled Fiber Optic Cable Assembly Units.

b. Establishment of a Section CW—Aerial Filled Cable Assembly Units.

c. Provision for suffix "A" in Sections C, CO, and CW to indicate when aluminum-clad steel strand will be used.

d. Provision for suffix "HIC" in Sections C, CF, and CW to indicate screened cable designated for TIC carrier systems.

e. Deletion of Section DW—Figure 8 Distribution Wire Assembly Units.

f. Provisions for broadening the types of aerial splice closures to include free-breathing, nonfilled, filled, filled type without encapsulant, pressurized, and splice closures and organizers for fiber optic cables including the deletion of closures for Figure 8 distribution wire.

g. Clarification of the definition of the HC—Cable Splicing Unit.

h. Establishment of a Section HO—Fiber Optic Splicing Assembly Units.

i. Provisions for an extra large serving area interface cabinet and additional accessory options for all size cabinets.

j. Elimination of the NPE, Guy Assembly Units on Existing Poles. Provided a suffix "N" under the PE unit to identify guys installed on existing poles.

k. Provisions, under PF, for plate and screw type anchors.

l. Provisions for a five-pair unprotected terminal block and mini loading coils in the PG unit.

m. Deletion of assembly units PG5–1, PG17–1, PG17–3, PG33–1, and PG33–3 for Figure 8 distribution wire.

n. Deletion of assembly units PM30–26, 51, and 101, and PM52–2 from Section PM—Ground and Miscellaneous Assembly Units.

5. REA Form 515g, Specifications and Drawings for Service Entrance and Station Protector Installation:

a. Clarification of the measurement of the BM71—Rock Excavating Unit, by adding after the word trenching, the words blasting, sawing, etc.

b. Establishment of a Section NI—Network Interface Assembly Units. Provisions under the NI unit for numerous options, each being identified by a suffix, to indicate the many variations that the assembly unit may take.

c. Provision for suffix "G" under Section P—Protector Assembly Units, to indicate that gas tube type station protectors are to be furnished.

d. Deletion of assembly units P1–9, P1–9F2, P1–9F6, P1–10, P1–10F2 and P1–10F6 from Section P—Protector Assembly Units.

e. Deletion of assembly unit PM3 from Section PM—Ground and Miscellaneous Assembly Units.

f. Deletion of, under Section SE—Service Entrance Assembly Unit, the requirement whereby a drop exceeding 300 feet is charged as 300 feet to SE and the remaining distance as a buried filled cable unit.

These additions and changes need to be included in the REA spcifications so that telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

List of Subjects in 7 CFR Part 1772

Loan programs—communications, Telecommunications, Telephone.

In view of the above, REA is proposing to amend 7 CFR Part 1772 by issuing revised Bulletins 345–150, 345–151, 345–152, 345–153, and 345–154.

PART 1772—[AMENDED]

1. The authority cited for Part 1772 is revised to read as follows, and all authorities following the sections are removed.

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

2. The table in § 1772.97 would be amended by revising the entries for Bulletins 345–150, 345–151, 345–152, 345–153, and 345–154 to read as follows:

§ 1772.97 Incorporation by Reference of Telephone Standards and Specifications.

* * * * * * *

345–150	Form 515a	REA Specifications and Drawings for Construction of Direct Buried Plant.
345–151	Form 515c	REA Specifications and Drawings for Conduit and Manhole Construction.
345–152	Form 515d	REA Specifications and Drawings for Underground Cable Installation.

345–153	Form 515f	REA Specifications and Drawings for Construction of Pole Lines and Aerial Cables.
345–154	Form 515g	REA Specifications and Drawings for Service Entrance and Station Protection Installation.

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Dated: September 28, 1988.

Jack Van Mark,

Acting Administrator.

[FR Doc. 88–22831 Filed 10–3–88; 8:45 am]

BILLING CODE 3410–15–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–26136, File No. S7–11–88]

Registration Requirements for Foreign Broker-Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; publication of comment letter.

SUMMARY: The Commission is publishing a comment letter presenting an alternative formulation of proposed Securities Exchange Act Rule 15a–6, which the Commission received from a committee of the American Bar Association ("ABA") in response to the Commission's earlier request for comments on the proposed rule in Securities Exchange Act Release No. 25801 (June 14, 1988). The Commission is taking this step so that interested persons will have an opportunity to comment on this alternative formulation of the proposed rule.

DATE: Comments must be received on or before October 31, 1988.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Room 6184, 450 Fifth Street NW., Mail Stop 6–9, Washington, DC 20549, and should refer to File No. S7–11–88. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel, (202) 272–2844, on John Polanin, Jr., Attorney, (202) 272–2848, Office of Legal Policy, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission recently published for comment proposed Rule 15a–6 under the Securities Exchange Act of 1934 ("Exchange Act"), [1] which would exempt from the broker-dealer registration requirements of section 15(a) of the Exchange Act [2] foreign entities that deal with specified U.S. institutional investors under certain limited conditions.[3] In response to the Commission's request for comments, the Committee on Federal Regulation of Securities of the Section of Business Law of the ABA submitted a comment letter including an alternative formulation of proposed Rule 15a–6.[4] This formulation generally reflects in the proposed rule the staff interpretive positions on which the Commission had requested comment when proposing the rule.[5].

The Commission believes that the ABA's alternative proposed rule deserves serious consideration. Accordingly, the Commission has determined to publish the ABA's proposal for public comment. Comments are requested to be submitted by October 31, 1988, when the comment period for proposed Rule 15a–6 will expire. The full text of the ABA's comment letter, including the alternative formulation of proposed Rule 15a–6, is set forth below.[6]

September 14, 1988.

Mr. Jonathan G. Katz,

Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Re: File No. S7–11–88

Dear Mr. Katz: This is in response to the Commission's request for comments on proposed Rule 15a-6, contained in Release No. 25801 under the Securities Exchange Act of 1934 (the "Release"). The Release relates generally to certain exclusions from registration for foreign broker-dealers.

This letter and its enclosure have been prepared by members of the Subcommittees on Broker-Dealer Matters and International Matters, both Subcommittees being part of the Committee on Federal Regulation of Securities, which in turn is part of the Section of Business Law of the American Bar Association (the "Association"). A draft of the enclosure was circulated for comment among members of the Subcommittees and certain members of the Committee, and the approach embodied therein has received the general concurrence of the majority of those who responded to the draft. Neither this letter nor its enclosure, however, represents the official view of the Association, the Section or the Committee, nor does it necessarily reflect the views of all the members who have seen it.

After reviewing proposed Rule 15a-6, we have concluded that it would be more efficient and practical if the various exclusions from registration for foreign broker-dealers catalogued in the Release were embodied in the rule itself rather than in a series of no-action and interpretive letters. Among other things, such a "codification" would spell out clearly in one place the ground rules to which foreign broker-dealers are subject. While some have suggested that placing all exclusions in a rule could make it more difficult to secure future interpretive relief as new fact patterns emerge, on balance we believe the expanded rule approach is more consistent with orderly development of the law in this area. Accordingly, we have drafted an expanded version of proposed Rule 15a-6 that would incorporate most of the exclusions currently contained in the letters.

Based on informal discussion of this approach with members of the Commission's staff, we thought it desirable to submit the draft formally with the request that the Commission publish it for comment. Publication will give interested parties an opportunity to analyze our approach as an alternative to that set forth in the Release.

There are some additional substantive exclusions that we believe should be contained in any rule the Commission may adopt on this subject, but we have omitted them from the current proposal, at the staff's suggestion, in an attempt to render the suggested approach more substantively neutral. Our suggestions in this regard will be contained in a comment letter to be submitted prior to the end of the comment period.

We request that the Commission publish the enclosed version of proposed Rule 15a-6 as an alternative to the version of the proposed rule promulgated in the Release.

Sincerely,

John M. Liftin.

For the drafting committee:

George J. Forsyth
Guy P. Lander
John M. Liftin
William J. Williams, Jr.

cc: Chairman David S. Ruder

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[1] 15 U.S.C. 78a–78jj.

[2] 15 U.S.C. 78*o*(a).

[3] Securities Exchange Act Release No. 25801 (June 14, 1988), 53 FR 23645 ("Proposing Release").

[4] Letter from John M. Liftin, Committee on Federal Regulation of Securities, Section of Business Law, ABA, to Jonathan G. Katz, Secretary, SEC (Sept. 14, 1988).

[5] *See* Proposing Release, Part III.

[6] When the Commission proposed Rule 15a–6, the Chairman, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. *See* Proposing Release, Part VI. The Commission takes the same position with respect to the ABA's alternative formulation of the proposed rule, for the reasons already stated in the Proposing Release. *Id.*

Commissioner Charles C. Cox
Commissioner Edward H. Fleischman
Commissioner Joseph A. Grundfest
Richard G. Kethcum, Director, Division of Market Regulation
Robert L. D. Colby, Chief Counsel, Division of Market Regulation
Larry E. Bergmann, Associate Director, Division of Market Regulation

REGISTRATION OF BROKERS AND DEALERS

§ 240.15a–6—Certain Foreign Brokers and Dealers [1]

(a) A foreign broker or dealer is not subject to the registration requirements of Section 15(a)(1) or 15B(a)(1) of the Act [2] by reason of its:

(1) effecting transactions in securities with, or inducing or attempting to induce the purchase or sale of securities by:

(i) U.S. brokers and dealers, whether acting as principal for their own account or as agent for others;

(ii) the African Development Bank, the Asian Development Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the United Nations and their agencies, affiliates and pension funds;

(iii) any agency or branch of a U.S. person located outside the United States that operates for valid business reasons;

(iv) U.S. citizens resident outside the United States, provided that the foreign broker or dealer does not direct its selling efforts toward identifiable groups of U.S. citizens resident abroad;

(v) foreign persons temporarily present in the United States with whom the foreign broker or dealer had a bona fide pre-existing relationship; and

(vi) subject to compliance with the requirements of paragraph (b), U.S. institutional investors; and

(2) execution of transactions in securities for customers who have not been solicited by the foreign broker or dealer; and

(3) provision of research reports to U.S. investors, provided that the research reports are distributed to U.S. investors by or on behalf of a U.S. broker or dealer, the U.S. broker or dealer states in writing prominently on the research report that it has accepted responsibility for the content of the research report, the research report prominently indicates that any U.S. person wishing to effect transactions in any security discussed therein should do so with the U.S. broker or dealer, and transactions in the securities discussed therein are effected with or through the U.S. broker or dealer and not with the foreign broker or dealer.

(b) A foreign broker or dealer may induce or attempt to induce the purchase or sale of securities by U.S. institutional investors, provided that:

(1) the foreign broker or dealer:

(i) effects the transaction with the U.S. institutional investor through a U.S. broker or dealer in the manner contemplated by clause (3) below; and

(ii) provides the Commission (upon request or, if applicable, pursuant to agreements reached between any foreign jurisdiction or any foreign securities authority and the Commission or the U.S. Government) with any information, documents or records within the possession, custody or control of the foreign broker or dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wheresoever located, that the Commission requests and that directly or indirectly relates to transactions covered by paragraph (b) of this section with a U.S. institutional investor or with the U.S. broker or dealer that executes the transactions;

(2) the foreign associated person of the foreign broker or dealer effecting the transaction with the U.S. institutional investor:

(i) does so entirely from outside the United States; and

(ii) is not subject to a statutory disqualification specified in Section 3(a)(39) of the Act or been found to have violated any substantially equivalent foreign statute or regulation; and

(3) the U.S. broker or dealer through which the transaction with the U.S. institutional investor is effected:

(i) is responsible for:

(A) issuing all required confirmations and statements to the U.S. institutional investor;

(B) as between the foreign broker or dealer and the U.S. broker or dealer, extending or arranging for the extension of any credit to the U.S. institutional investor in connection with the purchase of the securities;

(C) maintaining required books and records relating to the transactions, including those required by Rules 17a–3 and 17a–4 under the Act (17 CFR 240.17a–3 and 17a–4); and

(D) receiving, delivering and safeguarding funds and securities on behalf of the U.S. institutional investor in compliance with Rule 15c3–3 under the Act (17 CFR 240.15c3–3);

(ii) participates through an associated person in all oral communications between the foreign associated person and the U.S. institutional investor, unless the U.S. institutional investor has, or has under management, total assets in excess of $100 million;

(iii) has obtained from the foreign broker or dealer, with respect to the foreign associated person, the informnation specified in Rule 17a–3(a)(12) under the Act (17 CFR 240.17a–3(a)(12)); provided that the information required by paragraph (a)(12)(d) of such Rule shall include sanctions imposed by foreign securities authorities, exchanges or associations.

(iv) has obtained from the foreign broker or dealer and such foreign associated person written consent to service of process for any civil action brought by or proceeding before the Commission or a self-regulatory organization (as defined in Section 3(a)(26) of the Act) relating to transactions covered by paragraph (b) of this section, stating that process may be served on the U.S. broker or dealer as provided on the U.S. broker or dealer's current Form BD; and

(v) maintains a written record of the information and consents required by paragraphs (b)(3) (iii) and (iv) of this section, and all records in connection with trading activities of the U.S. institutional investor involving the foreign broker or dealer conducted pursuant to paragraph (b) of this section, in an office of the U.S. broker or dealer located in the United States, and makes such records available to the Commission upon request.

(c) When used in this Rule,

(1) the term "family of investment companies" shall mean:

(i) except for insurance company separate accounts, any two or more separately registered investment companies under the Investment Company Act of 1940 that share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services; and

(ii) with respect to insurance company separate accounts, any two or more separately registered separate accounts under the Investment Company Act of 1940 that share the same investment adviser or principal underwriter and function under operational or accounting or control systems that are substantially similar.

(2) the term "foreign associated person" shall mean any natural person resident outside the United States who is an associated person, as defined in Section 3(a)(18) of the Act, of the foreign broker or dealer and who participates in the solicitation of a U.S. institutional investor pursuant to paragraph (b) of this section.

(3) the term "foreign broker or dealer" shall mean any non-U.S. resident entity (including any U.S. entity engaged in business as a broker or dealer entirely outside the United States except as otherwise permitted by this section) that is neither an office nor a branch of a U.S. broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of "broker" or "dealer" in Sections 3(a)(4) and 3(a)(5) of the Act.

(4) the term "U.S. broker or dealer" shall mean (i) any broker or dealer registered with the Commission pursuant to Section 15(b) (for the purpose of transactions in all securities), Section 15(b) or 15B(a)(2) (for the purpose of transactions in municipal securities) and Section 15(b) or 15C(a)(2) (for the purpose of transactions in government securities) of the Act, and (ii) for the purpose of paragraph (a)(1)(i) but not paragraph (b) of this section, any bank acting in a broker or dealer capacity (including acting as a municipal or government securities broker or dealer).

(5) the term "U.S. institutional investor" shall mean a person that is:

(i) an investment company registered with the Commission under Section 8 of the Investment Company Act of 1940 (for purposes of determining whether such an investment company has total assets in excess of $100 million, the investment company may include the assets of other

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[1] Accompanying Release would state that to a very large extent Rule codifies prior staff interpretations as to activities not requiring registration as a broker or dealer.

[2] Consideration should be given to the adoption by the Secretary of the Treasury of a similar exemption, to the extent relevent, from the registration provisions of Section 15C(a)(1) of the Act.

members of the investment company's "family");

(ii) an investment adviser registered with the Commission under Section 203 of the Investment Advisers Act of 1940; or

(iii) an accredited investor, as defined in 17 CFR 230.501(a) (1), (2), (3) or (7).

the term "United States" shall mean the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

By the Commission.

Jonathan G. Katz,

Secretary.

September 30, 1988.

[FR Doc. 88-22976 Filed 10-3-88; 8:45 am]

BILLING CODE 8010-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 580

[Docket No. 88-19]

Effective Date of Tariff Changes

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; Enlargement of time to comment.

SUMMARY: The Commission initiated this proposed rulemaking by **Federal Register** Notice of August 30, 1988 (53 FR 33153), and established October 14, 1988, as the date comments were due. Counsel for the South Europe/U.S.A. Freight Conference ("SEUSA") has filed a request to extend the time for filing comments until November 1, 1988. In support of the request, it is stated that SEUSA members will not be able to meet as a group until the end of October and therefore will not have an opportunity to discuss the proposed rule collectively until that time. Therefore, for good cause shown, the request for an enlargement of time is granted.

DATE: Comments due on or before November 1, 1988.

ADDRESS: Comments (Original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202 523-5796.

Joseph C. Polking,

Secretary.

[FR Doc. 88-22753 Filed 10-3-88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Findings on Petitions To List the Oklahoma Salamander, Eleven New Mexico Mollusks, and Four Puerto Rican Waterbirds.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of findings on petitions.

SUMMARY: The Service announces four 12-month petition findings for petitions to amend the Lists of Endangered and Threatened Wildlife and Plants. For petitions to list the Oklahoma salamander, ten New Mexico mollusks, the white-cheeked pintail in Puerto Rico, and three other waterbirds in Puerto Rico the actions requested have been determined to be warranted but precluded by other actions to amend the lists. For the New Mexico ramshorn snail *(Pecosorbis kansasensis)* listing has been determined to be not warranted on the basis of a recently completed status survey.

DATES: The findings reported in this notice were made during the period from November 1987 to May 1988. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding the petition findings for the Oklahoma salamander and the New Mexico mollusks may be submitted to the Endangered Species Division, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505/766-3972, FTS 474-3972). Information, comments, or questions regarding the petition findings for the Puerto Rican waterbirds may be submitted to the Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622 (telephone 809/851-7297). The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the addresses listed above.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Chambers at the Albuquerque Regional Office or Hilda Diaz-Soltero at the Caribbean Field Office (telephone numbers are listed above under "**ADDRESSES**").

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, the U.S. Fish and Wildlife Service (Service) should make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but precluded from immediate proposal by other pending proposals. Section 4(b)(3)(C) requires that petitions for which the action requested is found to be "warranted but precluded by other actions to amend the lists" should be treated as though resubmitted on the date of such finding, i.e. requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the **Federal Register.**

A petition from Mr. Tom R. Johnson representing the Missouri Department of Conservation was dated March 10, 1986, and received by the Service on March 19, 1986. It requested the Service to list the Oklahoma salamander, *Eurycea tynerensis,* as a threatened species. Status review for the Oklahoma salamander had already been initiated by a notice of review published September 18, 1985 (50 FR 37958). The petition cited a status survey conducted in Missouri, and provided some additional observations about distribution and status in Arkansas and Oklahoma in support of the action requested. A 90-day determination that the action requested may be warranted was reported in the **Federal Register** for January 21, 1987 (52 FR 2240). A 12-month finding that the action was considered warranted but precluded by other listing activity was made in 1987 and reported in the **Federal Register** for July 7, 1988 (53 FR 25511).

The information available concerning the Oklahoma salamander was reviewed again by the Service in March 1988. On the basis of the best scientific and commercial information presently available, the Service has determined that the action requested by this petitioner is warranted but precluded by other actions to amend the lists. Surveys by the Arkansas Heritage Program have failed to reveal the occurrence of the salamander from at least two sites where it formerly occurred in Arkansas. Uncertainties remain in the data from Oklahoma. A study projected for completion in late 1988 is being conducted in Oklahoma to examine the status and habitat needs of this salamander. Listing priority for this species remains low because of the existence of many higher priority species.

A petition dated November 20, 1985, from Mr. Harold F. Olson, Director of the New Mexico Department of Game and Fish, was received by the Service on November 22, 1985. It requested the Service to add the following eleven taxa of New Mexico mollusks to the List of Endangered and Threatened Wildlife:

(1) Socorro spring snail *(Fontelicella neomexicana)*
(2) Chupadera spring snail *(Fontelicella* sp.)
(3) Roswell spring snail *(Fontelicella* sp.)
(4) Alamosa spring snail *Tryonia* sp.)
(5) Pecos assiminea snail *Assiminea* sp.)
(6) Gila spring snail *(Fontelicella* sp.)
(7) New Mexico hot spring snail *(Fontelicella* sp.)
(8) Pecos spring snail *(Fontelicella* sp.)
(9) Koster's spring snail *Tryonia* sp.)
(10) New Mexico Ramshorn snail *Pecosorbis kansasensis)*
(11) Sangre de Cristo pea-clam *(Pesidium* sp.)

The Service determined that the petition presented substantial information that the requested action may be warranted, and reported the 90-day finding in the **Federal Register** for August 20, 1986 (51 FR 29671). That publication initiated formal status review for the last six species listed above, the first five having been subjects of the Service's earlier comprehensive invertebrate notice of review on May 22, 1984 (49 FR 21664). A 12-month finding concluded that the action requested was warranted but precluded, and was reported in the **Federal Register** on July 1, 1987 (52 FR 24485)

The Service has continued to review the status of these species and new information has become available. The action requested by this petitioner now appears to be warranted for all of the species except one, but precluded by work on other species having higher priority for listing. The exception is the New Mexico ramshorn snail *(Pecosorbis kansasensis)*, shown in a recently completed status survey to be more abundant than originally believed. The action requested by this petitioner in respect to the New Mexico ramshorn snail has been determined to be not warranted. According to the best scientific information available, the action requested by this petitioner has been determined to be warranted for the other ten of the species mentioned but precluded by work on species having higher priority for listing.

The third petition was contained in a memorandum from the refuge staff of Caribbean Islands National Wildlife Refuge. It was dated November 21, 1985, and was accepted for consideration on November 22, 1985. It requested that the Puerto Rican population of the white-cheeked pintail, *Anas bahamensis*, be added to the List of Endangered and Threatened Wildlife. The petition contained documentation of a serious island-wide decline in this species in Puerto Rico since the 1950's, from a former condition of being one of the most abundant waterfowl there. Habitat losses and illegal taking were suggested as causes for the decline. The Service found at 90 days that the petition presented substantial information that the requested action may be warranted, and the finding was reported in the **Federal Register** for August 20, 1986 (51 FR 29671). That publication also initiated formal status review for the white-cheeked pintail. A 12-month finding for this species determined that the action requested was warranted but precluded, and was reported in the **Federal Register** on July 1, 1987 (52 FR 24485).

Review of the available evidence by Service biologists continues to indicate that listing of this species is warranted, but precluded by work on species having higher priority for listing. The status of this duck is generally comparable to that of the three other waterfowl species now under petition for Federal listing from the Puerto Rican Department of Natural Resources (see next petition finding below). The action requested by this petition for the white-cheeked pintail has been determined to be warranted according to the best information available, but precluded by work on other species having higher priority for listing.

In a fourth petition, dated December 27, 1984, and received January 3, 1985, the Service was requested by the Department of Natural Resources of the Commonwealth of Puerto Rico to list the Puerto Rican populations of the following three species of water birds:
Caribbean coot, *Fulica caribea*
Ruddy duck, *Oxyura jamaicensis*
West Indian whistling duck, *Dendrocygna arborea.*

All three of the above waterbird species have declined significantly in Puerto Rico, but information on their status throughout the rest of their respective ranges and the relationships between various island stocks is still sketchy. An administrative finding that the action requested may be warranted was announced in a **Federal Register** notice published on July 5, 1985 (50 FR 27637). Subsequent 12-month findings that the requested action was warranted but precluded by work on other species having higher priority for listing were reported in the **Federal Register** for August 20, 1986 (51 FR 29671) and for July 1, 1987 (52 FR 24485). The action requested by this petition for the three Puerto Rican water bird species was again determined to be warranted according to the best information available, but precluded by work on other species having higher priority for listing.

Section 4(b)(3)(B)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. Expeditious progress is being made in listing endangered and threatened species, and is reported annually in the **Federal Register.** The most recent progress report was published on July 7, 1988 (53 FR 25511). The Service also wishes to mention a recent petition finding of "warranted" for a petition to list five Texas cave invertebrate species. Dated February 8, 1985, and received February 12, 1985, the petition was from Mr. Patrick Hartigan on behalf of Travis Audubon Society. Twelve-month findings of warranted but precluded by other listing activities were announced in the **Federal Register** of August 20, 1986 (51 FR 29671) and July 1, 1987 (52 FR 24485). The warranted finding was incorporated in a proposed rule to list the species approved March 25, 1988, and published April 19, 1988 (53 FR 12787).

Author

This notice was prepared by Dr. George Drewry, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1975 or FTS 235–1975).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 26, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–22828 Filed 10–3–88; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 53, No. 192
Tuesday, October 4, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Animal Damage Control Advisory Committee; Renewal

In accordance with section 9(a)(2) of the Federal Advisory Committtee Act (Pub. L. 92–463), notice is hereby given that the Secretary of Agriculture has renewed the National Animal Damage Control Advisory Committee for a 2-year period.

The purpose of the Committee is to advise the Secretary concerning policies, program issues, and research needed to conduct the Animal Damage Control Program. The Committee also serves as a public forum enabling those affected by the Animal Damage Control Program to have a voice in the program's policies.

The Secretary has determined that the work of the Committee is in the public interest and is in connection with the duties of the Department of Agriculture.

For further information, contact C. Joe Packham, Acting Deputy Administrator, Animal Damage Control, Animal and Plant Health Inspection Service, Department of Agriculture, Room 1624, South Building, 14th Street and Independence Avenue, SW., Washington, 20090–6464, (202) 447–2054.

Done in Washington, DC, this 29th day of September, 1988.

John J. Franke, Jr.,

Assistant Secretary, for Administration.

[FR Doc. 88–22833 Filed 10–3–88; 8:45 am]

BILLING CODE 3410–34–M

Soil Conservation Service

Lincolnshire Park Critical Area Treatment RC&D Measure, Virginia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lincolnshire Park Critical Area Treatment RC&D Measure, Tazewell County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Norris, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240–9999, telephone 804–771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. George C. Norris, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for controlling surface runoff of 2 acres in Lincolnshire Park in Tazewell County, Virginia.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to Various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. George C. Norris.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Date: September 19, 1988.

George C. Norris,

State Conservationist.

[FR Doc. 88–22744 Filed 10–3–88; 8:45 am]

BILLING CODE 3410–16–M

Pulaski County Road Bank Critical Area Treatment RC&D Measure, Virginia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pulaski County Road Bank Critical Area Treatment RC&D Measure, Pulaski County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Norris, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240, telephone 804–771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. George C. Norris, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for seeding eroding road banks in Pulaski County, Virginia. The planned work will include the establishment of 34.6 acres of permanent vegetative cover by hydro-seeding and mulching.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on

file and may be reviewed by contacting Mr. George C. Norris.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Date: September 20, 1988.

George C. Norris,

State Conservationist.

[FR Doc. 88-22745 Filed 10-3-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 30-88]

Proposed Foreign-Trade Zone, Midland, TX; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Midland, Texas (Midland), requesting authority to establish a general-purpose foreign-trade zone in Midland, within the Midland Customs user-fee airport. The application was submitted pursuant to the provisions of the Foreign-Trade Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 26, 1988. Midland is authorized to make the proposal under Senate Bill 333 of the 70th Texas Legislature, Regular Session, 1987, signed May 25, 1987.

The proposal calls for a general-purpose zone consisting of two parcels totalling 166 acres within the 300-acre Airport Industrial Park at the Midland International Airport. The airport was designated as a user-fee facility by the U.S. Customs Service in June, 1987.

Parcel 1 (138 acres) is located on the eastern side of the Airport between Continental and Wright Drives. Initial zone activity will be accommodated by an existing 18,000 sq. ft. warehouse. Parcel 2 (28 acres) is located in the southeastern section of the airport, just north of U.S. Highway 80.

The application contains evidence of the need for zone services in the Midland area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activity including yarns, oil drilling equipment, telephones and auto engine parts. Specific manufacturing approvals are not being sought at this time. Such requests will be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr., Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe St., Houston, Texas 77057-3012; and Colonel John E. Schaufelberger, District Engineer, U.S. Army Engineer District Fort Worth, P.O. Box 17300, Fort Worth, Texas 76102-0300.

As part of its investigation, the examiners committee will hold a public hearing on November 16, 1988, beginning at 9 a.m. at the Midland City Hall, 300 North Loraine Stree, Midland, Texas 79701.

Interested parties are invited to present their views at the hearing, including any views as to whether or not a Customs user-fee facility can be considered the equivlent of a port of entry. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by November 9. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiner's committee, care of the Executive Secretary, at any time from the date of this notice through December 16, 1988.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Director of Airports, at Midland International Airport, 9506 Laforce Boulevard, Midland, Texas 79711

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: September 27, 1988

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-22827 Filed 10-3-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Lamont-Doherty Geological Observatory, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Material Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 987; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-189. *Applicant:* Lamont-Doherty Geological Observatory of Columbia University, Palisades, NY 10964. *Instrument:* Thermal Ionization Double-Focusing Mass Spectrometer, Model VG Isolab 120. *Manufacturer:* VG Isotopes, United Kingdom. *Intended Use:* See notice at 53 FR 20154, June 2, 1988. *Reasons for this Decision:* The foreign instrument provides precise automated variable multicollector thermal ionization of isotopic ratios on small (10^{-7}-10^{-12}g) samples.

Docket Number: 88-190. *Applicant:* Texas Christian University, Fort Worth, TX 76129. *Instrument:* Fourier Transform Interferometer, Model DA3.16. *Manufacturer:* BOMEM, Canada. *Intended Use:* See notice at 53 FR 19983, June 1, 1988. *Reasons for this Decision:* The foreign instrument provides an unapodized resolution of $0.026cm^{-1}$.

Docket Number: 88-198. *Applicant:* State University of New York at Buffalo, Buffalo, NY 14214. *Instrument:* X-Ray Generator. *Manufacturer:* Rigaku, Japan. *Intended Use:* See notice at 53 FR 19983, June 1, 1988. *Reasons for this Decision:* The foreign article provides 12 kW of power and a focal spot size (brilliance) of 3.2 kW ($3.55 kW/mm^{-2}$).

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-22826 Filed 10-3-88; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Use of Commercial Components in Military Equipment

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Use of Commercial Components in Military Equipment will meet in open session on November 4, 1988 at the TRW Corporation, 12900 Fair Lakes Parkway, Fairfax, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review issues concerning intellectual property, the domestic semiconductor industry, and issues as requested from industry. Any questions concerning this meeting should be addressed to Mr. Craig Saunders, Task Force Executive Secretary, at (202) 695–7915.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 29, 1988.

[FR Doc. 88–22768 Filed 10–3–88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Restricted Eligibility for Cooperative Agreement Award; Conference of Radiation Control Program Directors

AGENCY: Department of Energy.

ACTION: Notice of restricted eligibility for Cooperative Agreement Award.

SUMMARY: The Department of Energy (DOE) Chicago Operations Office announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), it is restricting eligibility for award of a cooperative agreement to the Conference of Radiation Control Program Directors (CRCPD) in order to (1) provide information to DOE on the radiation control programs and radiological emergency response organizations in each State and (2) analyze the health physics aspects of the Commercial Vehicle Safety Alliance's (CVSA's) draft spent fuel vehicle inspection procedure and coordinate implementation of a proposed pilot study of the inspection program.

FOR FURTHER INFORMATION CONTACT: Steven C. Kouba, RTTD, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439, (312) 972–2263.

SUPPLEMENTARY INFORMATION: Under the Nuclear Waste Policy Act (NWPA), the DOE is required to develop an integrated, publicly acceptable transportation network which will ensure the safe and efficient movement of civilian spent fuel and high-level waste between points of origin and destination. In order to accomplish this mandate, it is necessary that the DOE develop and maintain lasting institutional relationships with appropriate groups to provide technical analyses of and input into transportation issues as these issues are defined.

The CRCPD is a non-profit organization uniquely qualified to assist DOE because it is the only organization that represents State radiation control personnel and thus provides an ideal contact, cooperation, and coordination vehicle for State involvement on a nationwide scale. CRCPD is an organization possessing the requisite technical and regulatory expertise consistent with the principles of the NWPA. The voting membership of CRCPD includes the radiation control program directors in each State. In addition, associate members include each State program's subordinate staff. Through its membership, the CRCPD can provide DOE nationwide access to the State officials responsible for radiological transportation emergency response, regulatory inspection and enforcement, environmental monitoring, and interaction with State-elected officials and the public on questions of high-level waste transportation safety. Products developed by the CRCPD will carry the approval of its membership. This expertise and credibility will help ensure DOE's effectiveness in implementing the overall requirements of the NWPA and the Nuclear Waste Policy Act Amendment, especially those requirements related to radiological transportation emergency response and inspection/enforcement training programs.

Eligibility for the cooperative agreement award is being restricted to CRCPD because of its unique technical, regulatory, and representational capabilities. This cooperative agreement will cover an approximate three year period beginning October, 1988 and will provide CRCPD with approximately $300,000.

Issued in Chicago, Illinois on September 27, 1988.

Timothy S. Crawford,

Assistant Manager for Administration.

September 27, 1988.

[FR Doc. 88–22775 Filed 10–3–88; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board (ERAB).

Date and Time: November 10, 1988—9:00 a.m.–3:45 p.m.

Place: Department of Energy, 1000 Independence Avenue SW., Room 8E–089, Washington, DC 20585.

Contact: Dr. Philip M. Stone, Department of Energy, Office of Energy Research, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202/586–5444.

Purpose of the Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda: The specific agenda items and times are subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the day of the meeting.

November 10, 1988

9:00 a.m. Opening Remarks/ Administrative Matters
9:15 a.m. Response to the New Production Reactor Report
9:45 a.m. Response to the Education Report
11:15 a.m. Response to the Competitiveness Report
11:45 a.m. Lunch
1:00 p.m. Outlook on Energy Issues
2:00 p.m. Introduction of the Director of the Office of Energy Research
2:30 p.m. Recent ERAB Studies (Update of the 1986 Retrospective Analysis)
2:45 p.m. Break
3:00 p.m. Views on Issues Facing DOE—An ERAB Perspective
3:30 p.m. Public Comment (10 minute rule)
3:45 p.m. Adjourn

Public Participation: This meeting is open to the public. The Chairman of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Dr. Philip Stone at the address or telephone number listed above. Requests must be

received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 28, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–22776 Filed 10–3–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. MT88–38–001, et al.]

Valley Gas Transmission, Inc., et al.; Natural Gas Pipeline Rate Filings

September 29, 1988.

Take notice that the following filings have been made with the Commission:

1. Valley Gas Transmission, Inc.

[Docket No. MT88–38–001]

Take notice that on September 27, 1988, Valley Gas Transmission, Inc. tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 2:

Revised Sheet No. 53
Revised Sheet No. 53a
Revised Sheet No. 53b

Comment date: October 6, 1988, in accordance with Standard Paragraph K at the end of this notice.

2. Trunkline Gas Company

[Docket No. MT88–22–002]

Take notice that on September 26, 1988, Trunkline Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 9–BY
First Revised Sheet No. 9–DC

Comment date: October 6, 1988, in accordance with Standard Paragraph K at the end of this notice.

3. MIGC, Inc.

[Docket No. MT88–37–000]

Take notice that on September 26, 1988, MIGC, Inc. tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 282
Second Revised Sheet Nos. 297 through 301
Second Revised Sheet Nos. 310 through 316
Second Revised Sheet Nos. 320 through 321
Second Revised Sheet Nos. 333 through 334

Comment date: October 6, 1988, in accordance with Standard Paragraph K at the end of this notice.

4. Southern Natural Gas Company

[Docket No. MT88–20–001]

Take notice that on September 26, 1988, Southern Natural Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Sixth Revised Volume No. 1:

Substitute Fourth Revised Sheet No. 30X
Substitute Second Revised Sheet No. 3000
Substitute Original Sheet No. 30PP.1
Substitute Original Sheet No. 45R.19a

Comment date: October 6, 1988, in accordance with standard Paragraph K at the end of this notice.

5. Algonquin Gas Transmission Company

[Docket No. MT88–1–001]

Take notice that on September 26, 1988, Algonquin Gas Transmission Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute First Revised Sheet No. 573
Substitute First Revised Sheet No. 592
Substitute First Revised Sheet No. 600
Substitute First Revised Sheet No. 656
Substitute First Revised Sheet No. 660
Substitute First Revised Sheet No. 661
Substitute First Revised Sheet No. 662

Comment date: October 6, 1988, in accordance with Standard Paragraph K at the end of this notice.

6. CNG Transmission Corporation

[Docket No. MT88–15–002]

Take notice that on September 26, 1988, CNG Transmission Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 122, Superseding Original Sheet No. 122

Comment date: October 6, 1988, in accordance with Standard Paragraph K at the end of this notice.

7. Northern Border Pipeline Company

[Docket No. MT88–27–001]

Take notice that on September 26, 1988, Northern Border Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Substitute Second Revised Sheet No. 100
Substitute Original Sheet Nos. 255, 258, and 262
Original Sheet No. 263

Comment date: October 6, 1988, in accordance with Standard Paragraph K at the end of this notice.

8. Western Transmission Corporation

[Docket No. MT88–39–002]

Take notice that on September 26, 1988, Western Transmission Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 17A, Superseding Original Sheet No. 17A
First Revised Sheet No. 17A.1, Superseding Original Sheet No. 17A.1
First Revised Sheet No. 17A.2, Superseding Original Sheet No. 17A.2
First Revised Sheet No. 17A.3, Superseding Original Sheet No. 17A.3
Original Sheet Nos 17A.4 through 17A.9

Comment date: Otober 6, 1988, in accordance with Standard Paragraph K at the end of this notice.

Standard Paragraphs:

K. Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a

motion with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22824 Filed 10-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-2-20-001 and TM89-1-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FER Gas Tariff

September 29, 1988.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 23, 1988, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, six (6) copies each of the following tariff sheets:

Proposed to be effective September 1, 1988

Substitute Twenty-seventh Revised Sheet No. 201
Substitute Twenty-eighth Revised Sheet No. 203
Alternate Twenty-first Revised Sheet No. 205
Seventeenth Revised Sheet No. 211
Eleventh Revised Sheet No. 214

Proposed to be effective October 1, 1988

Substitute Twenty-eighth Revised Sheet No. 201
Substitute Twenty-ninth Revised Sheet No. 203
Substitute Twenty-second Revised Sheet No. 204
Twenty-second Revised Sheet No. 205
Eighteenth Revised Sheet No. 211
Twelfth Revised Sheet No. 214

Algonquin states that, on August 31, 1988, Texas Eastern Transmission Corporation ("Texas Eastern") motioned, to be effective on September 1, 1988, the suspended rates as adjusted for purchased gas costs and Commission ordered changes in Docket No. RP88-67-008. Algonquin is filing Substitute Twenty-seventh Revised Sheet No. 201 to revise its Quarterly Purchased Gas Adjustment (PGA), Docket No. TQ88-2-20-001, to reflect those changes made by Texas Eastern in its August 31, 1988 motion filing in the services underlying Rate Schedules F-1, WS-1, I-1 and E-1. The rate changed represent an increase of approximately $5.9 million in purchased gas cost for the effective period of Algonquin's instant revised Quarterly PGA. Algonquin further states that it is also filing revised tariff sheets Substitute Twenty-eighth Revised Sheet No. 203, Alternate Twenty-first Revised Sheet No. 205, Seventeenth Revised Sheet No. 211 and Eleventh Revised Sheet No. 214 to reflect the changes made by Texas Eastern in its motion filing in the services underlying Rate Schedules E-2, F-4, STB and SS-III. The proposes effective date of aforementioned revised tariff sheets is September 1, 1988.

Algonquin states that on August 31, 1988 in Docket No. TQ89-1-16-000, its pipeline supplier, National Fuel Gas Supply Corporation ("National") filed a Quarterly PGA to reflect its latest estimate of the cost of purchased gas in its rates and to track the Commission approved Annual Charge Adjustment (ACA) charge for the fiscal year 1988. National's filing increases the commodity rate by 63.51 cents and lowers the ACA charge by 0.3 cents per MMBtu. Algonquin is filing Substitute Twenty-second Revised Sheet No. 204 to track those changes made by National in the service underlying Rate Schedule F-3. The proposed effective date of Substitute Twenty-second Revised Sheet No. 204 is October 1, 1988.

Algonquin states that on August 30, August 31 and September 2, 1988, its suppliers, CNG Transmission Corporation, Transcontinental Pipe Line Corporation and Texas Eastern filed to track the revised ACA charge for the fiscal year 1988 in their rates. Algonquin is filing Substitute Twenty-eighth Revised Sheet No. 201, Substitute Twenty-ninth Revised Sheet No. 203, Substitute Twenty-second Revised Sheet No. 204, Twenty-second Revised Sheet No. 205, Eighteenth Revised Sheet No. 211 and Twelfth Revised Sheet No. 214 to track those changes made by its suppliers in the services underlying Rate Schedules F-1, WS-1, I-1, E-1, F-2, F-3, F-4, STB and SS-III. The proposed effective date of the revised sheets tracking the ACA charge is October 1, 1988 to coincide with the proposed effective date of Algonquin's suppliers ACA filings.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures (18 CFR 385.214, 385.211). All such motions or portests should be filed on or before Oct. 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22822 Filed 10-3-88; 8: 45 am]

BILLING CODE 6717-01-M

[Docket No. TC88-11-000

Mississippi River Transmission; Tariff Filing

September 29, 1988.

Take notice that Mississippi River Transmission Corporation (Applicant) has filed revised Tariff sheets to become effective November 1, 1988, pursuant to § 281.204(b) of the Commission's Regulations which requires interstate pipelines to update their respective index of entitlements annually to reflect changes in Essential Agricultural Use. The following sheets have been submitted:

Twelfth Revised Sheet No. 75
Tenth Revised Sheet No. 76
Thirteenth Revised Sheet No. 78
Eleventh Revised Sheet No. 79

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22823 Filed 10-3-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3458-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*), these notices announce that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and are available to the public for review and comment. The ICRs describe the nature of the information collection and their expected costs and burdens; where appropriate, they include the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Standard of Performance for the Phosphate Fertilizer Industry (NSPS Subparts T, U, V, W, X). (EPA ICR# 1061).

Abstract: Owners/operators of phosphate fertilizer plants must notify EPA of any new construction or modifications, as well as of startups, shutdowns and any malfunctions. They must also notify EPA of the dates and results of initial performance tests involving pollution control technologies. Owners/operators must install, calibrate, and maintain, monitoring devices to determine the mass flow of phosphate-bearing feed, and a device to continuously measure/record pressure drop across the scrubbers. Records of the mass of phosphate-bearing feed must also be maintained.

Burden Statement: The estimated public reporting burden for this collection of information is 87.5 hours per respondent, per year. This estimate includes the maintenance of flow monitoring device(s), data collection, and ongoing recorkeeping.

Respondents: Phosphate fertilizer industries.

Estimated No. of Respondents: 7.

Frequency of Collection: one response per year.

Total Estimated Annual Burden on Respondents: 612 hours.

Title: Standard of Performance for New Stationary Source—Storage Vessels for Petroleum Liquids. (EPS ICR # 1050).

Abstract: The standard requires owners/operators of storage vessels for petroleum liquids to submit notifications and reports of physical/operational changes or new construction which may increase the emission rate of volatile organic compounds at the facility and maintain recordsf of these events.

Burden Statement: The estimated public reporting burden for this collection of information for first-time respondents is 81.5 hours per respondent, for the first year only. Respondents in their second and subsequent years of reporting incur 0.5 hours each. These estimates include submitting startup notifications, compiling startup reports, data collection, and ongoing recordkeeping.

Respondents: Owner/operators of petroleum storage vessels.

Estimated No. of Respondents: 183.

Frequency of Collection: one response per year.

Estimated Total Annual Burden on Respondents: 659 hours.

Send comments regarding the burden estimates, or any other aspect of these collections of information, including suggestions for reducing the burden, to:

Sandy Farmer, Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460.

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395–3084)

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 1381; Notification Requirements for Industrial Non-Hazardous Disposal Facilities (Part 257) and Recordkeeping Requirements for Municipal Solid Waste Landfills (Part 258); was disapproved on 8/31/88.

EPA ICR # 1071; NSPS for Stationary Gas Turbines (Subpart GG)—Information Requirements; was approved 9/2/88; OMB # 2060–0028; expires: 9/30/91.

EPA ICR # 0959; Reporting and Recordkeeping Requirements for Groundwater Monitoring: Amendments; was approved 8/31/88; OMB # 2050–0033; expires: 10/31/90.

EPA ICR # 1474; Ecological Information Initiative; was approved 8/31/88; OMB # 2030–0022; expires: 9/30/91.

EPA ICR # 1435; Significance of Food Processing By-Products as Contributors to Animal Feed—Phase I—Food Processing Industry Survey; was approved 8/30/88; OMB # 2070–0096; expires: 9/30/89.

EPA ICR # 1478; Survey of Information Management Issues Under SARA, Title III; was approved 8/25/88; OMB # 2050–0089; expires: 12/31/88.

EPA ICR # 1483; Quality Assurance Pilot for Toxic Release Inventory Form R; was approved 9/2/88; OMB # 2070–0098; expires: 12/13/88.

Date: September 27, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88–22816 Filed 10–3–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3458–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Construction Grants Program Information. (EPA ICR # 0827).

Abstract: To receive grant money for wastewater treatment construction projects, municipalities and Indian Tribes submit information to ensure adequate public participation, financial accountability and consistent management directed to achieve environmental objectives. This program is a cooperative Federal, State, and local effort to build treatment works as efficiently and economically as possible.

Burden Statement: The estimated public reporting burden for this collection of information is 88 hours per municipality/Indian Tribe, per year. This estimate includes data collection and compilation, planning activities, studies administration and testing, and notice and report submission. The burden to States is 4,774 hours per year. This estimate includes the preparation of project priority lists, oversight of financial agreements, and the administration of grants payments.

Respondents: Municipalities, Indian Tribes, States.

Estimated Number of Respondents: 930.

Frequency of Collection: Collection items are submitted once per grant application/award.

Total Estimated Annual Burden: 82,145 hours.

Send comments regarding the burden estimates, or any other aspects of this collection of information, including suggestions for reducing the burdens, to:

Carla Levesque, Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 2046

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395–3084).

OMB Responses to Agency PRA Clearance Requests

EPA ICR #0370.07; Underground Injection Control Program Information; was approved 9/7/88; OMB #2040–0042; expires 9/30/91.

Date: September 26, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88–22817 Filed 10–3–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

The Bancorp of Tomah, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 21, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Bancorp of Tomah, Inc.*, Tomah, Wisconsin; to become a bank holding company by acquiring 76.76 percent of the voting shares of First Bank of Tomah, Tomah, Wisconsin. Comments on this application must be received by October 13, 1988.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Klossner Bancorporation, Inc.*, Klossner, Minnesota; to merge with Houston State Holding, Inc., Houston, Minnesota, and thereby indirectly acquire Houston State Bank, Houston, Minnesota.

2. *North Shore Financial Corporation*, Duluth, Minnesota; to acquire 55 percent of the voting shares of The Airport State Bank, Duluth, Minnesota.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *United Security Bancorporation*, Chewelah, Washington; to acquire 100 percent of the voting shares of Home Security Bank, in organization, Sunnyside, Washington, a *de novo* bank.

Board of Governors of the Federal Reserve System, September 27, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–22754 Filed 10–3–88; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Ralph Owen Delaney

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 18, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Ralph Owen Delaney*, Boca Raton, Florida; to acquire 15 percent of the voting shares of Consolidated Banc Shares, Inc., Clarksburg, West Virginia, and thereby indirectly acquire The Lowndes Bank, Clarksburg, West Virginia.

Board of Governors of the Federal Reserve System, September 27, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–22755 Filed 10–3–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority

Introduction

This Notice amends chapter AHB of Part A (Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services) as published at 43 FR 20561 (May 12, 1978). The revisions reflect the assignment of Departmental Grant Appeals Board personnel to organizational components separating the Board's function of hearing and initially deciding civil remedies cases from the function of reviewing these and other administrative decisions. As a result of these revisions, the name of the Departmental Grant Appeals Board is changed to the Departmental Appeals Board. The revised chapter reads as follows:

Section AHB.00 The Departmental Appeals Board—(Mission)

The Departmental Appeals Board is an independent office established (1) to review certain disputes between grantees and constituent agencies of the Department under 45 CFR Part 16; (2) to adjudicate certain civil remedies cases pursuant to delegations from the Secretary; and (3) to perform other review, adjudication and mediation services as assigned.

Section AHB.10 The Departmental Appeals Board—(Organization)

The Departmental Appeals Board, under the leadership of the Chair, who is supervised by the Under Secretary, includes:

A. The Immediate Office of the Departmental Appeals Board, which includes:

1. The Chair;
2. The Executive Secretary;
3. Board Members; and
4. Administrative Law Judges.

B. The Appellate Division.

C. The Civil Remedies Division.

The Board receives administrative support from the Assistant Secretary for Personnel Administration.

Section AHB.20 The Departmental Appeals Board—(Functions).

A. The Immediate Office of the Departmental Appeals Board assists the Chair in providing adjudicative and administrative services. The Chair is also a Board Member and provides leadership to the organizational components of the Board. The Executive Secretary assists the Chair in administrative matters and provides logistical support to the other organizational components of the Board. The Board Members hear and decide grant disputes and appeals, and other cases as assigned. The Administrative Law Judges hear and decide civil remedies cases, and other cases as assigned.

B. The Appellate Division provides attorney and other staff support to assist in the Board's administrative review of: disallowances of federal grant funds under Titles I, IV, X, XIV, XIX and XX of the Social Security Act; determinations by the Administrative Law Judges in civil remedies cases; disapprovals of State plans and plan amendments under section 1116(a)(2) of the Social Security Act; and disputes involving direct discretionary grants, cost allocation plans, indirect cost rates, and SSI agreement disputes. The Division is headed by a supervisory attorney who manages the Division's resources and advises Board members. Attorneys in the Division research legal issues; review and evaluate case files, briefs and transcripts; conduct pre-hearing proceedings; draft decisions; provide advice and assistance to Board Members on the conduct of cases and decisions; and participate in hearings.

C. The Civil Remedies Division provides attorney and other staff support to assist in the hearing and disposition of civil remedies cases. The civil remedies cases decide the justification and appropriateness of penalties, assessments and exclusions against persons or entities accused of fraud and abuse in the Department and its programs in general and its health care financing programs in particular. The numerous authorities on which these cases are based are drawn from a number of legislative enactments, including the Program Fraud Civil Remedies Act, the Medicare and Medicaid Patient and Program Protection Act, the Health Care Quality Improvement Act of 1986, the Deficit Reduction Act of 1984, the Tax Equity and Fiscal Responsibility Act of 1982, and the Consolidated Omnibus Budget Reconciliation Act. The Division is headed by a supervisory attorney who also assigns cases to the Administrative Law Judges. Attorneys in the Division research legal issues; review and evaluate case files, briefs and transcripts; conduct pre-hearing proceedings; draft decisions; provide advice and assistance to Administrative Law Judges on the conduct of cases and decisions; and participate in hearings.

Date: September 27, 1988.

Elizabeth M. James,

(Acting) Assistant Secretary for Management and Budget.

[FR Doc. 88-22779 Filed 10-3-88; 8:45 am]

BILLING CODE 4150-04-M

Advisory Commission Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following national advisory body scheduled to meet during the month of October 1988:

Name: Secretary's Commission on Nursing.

Date: Sunday, October 23, 1988.

Time: 8:00 p.m.

Place: Vista Hotel, 1400 M. Street NW., Washington, DC, and

Date: Monday, October 24, 1988.

Time: 8:30 a.m.

Place: Room 727A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC

Purpose: The Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will also consider the recruitment and retention of nurses in the U.S. Public Health Service, the Veterans Administration and the Department of Defense. As appropriate for its work, the Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

Agenda for October 23: The agenda for this meeting will consist of a presentation on findings from a study of the relationship between the Medicare Prospective Payment System and the nurse shortage. The presentation will commence at 8:00 p.m.; it will be preceded by a dinner for Commission members which begins at 6:30 p.m.

Agenda for October 24: The agenda for this meeting will include: a discussion of recommendations and implementation strategies to be included in the Commission's final report; and presentation on findings from studies of decision making by nurses in hospitals and of model nurse retention practices.

Agenda items are subject to change as priorities dictate.

Anyone wishing to attend these meetings who is hearing impaired and requires the services of an interpreter for the deaf should contact the Commission at least one week before the scheduled meeting. All such requests, as well as requests for information, should be addressed to the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 600E, 200 Independence Avenue SW., Washington, DC, 20201, telephone 202/245-0409.

Date: September 27, 1988.

Lillian K. Gibbons, R.N., Dr. P.H.

Executive Director, Secretary's Commission on Nursing.

[FR Doc. 88-22780 Filed 10-3-88; 8:45 am]

BILLING CODE 4150-04-M

Public Health Service; Telecommunications Demonstration Projects; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under Title IV, Subtitle A, Part 4, section 4094(e) of Pub. L. 100-203, The Omnibus Budget Reconciliation Act of 1987, pertaining to Telecommunications Demonstration Projects.

This delegation became effective upon date of signature.

Date: September 20, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-22751 Filed 10-3-88; 8:45 am]

BILLING CODE 4160-15-M

Centers for Disease Control

Advisory Committee for Elimination of Tuberculosis; Meeting

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Advisory Committee for Elimination of Tuberculosis (ACET).

Time and Date:

8:00 a.m.—4:30 p.m.—November 2, 1988

8:00 a.m.—2:30 p.m.—November 3, 1988

Place: The Emory Room, Stafford-Emory Inn, 1644 Clifton Road NE., Atlanta, Georgia 30329.

Status: Open.

Purpose: This Committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for eliminating tuberculosis. Specifically, the Committee makes recommendations regarding policies, strategies, objectives, and priorities, addresses the development of new technologies and their subsequent application, and reviews progress toward elimination.

Matters to be Discussed: Tuberculosis control among the foreign-born. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Control, and Executive Secretary, ACET, Center for Prevention Services, CDC, 1600 Clifton Road NE., Mailstop E-10, Atlanta, Georgia 30333, Telephones: FTS: 236-2501; Commercial: 404/639-2501.

Dated: September 28, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-22820 Filed 10-3-88; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Medicaid Program; Reconsideration of Disapproval of an Oklahoma State Plan Amendment; Hearing

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 15, 1988, in Dallas, Texas to reconsider our decision to disapprove Oklahoma State Plan Amendment 87-18.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk on or before October 19, 1988.

FOR FURTHER INFORMATION, CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4470.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a portion of Oklahoma State Plan Amendment 87-18 (SPA 87-18).

Section 1116 of the Social Security Act and 45 CFR 201.4 and Part 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Oklahoma SPA 87-18 violates section 1902(a)(30) of the Social Security Act and regulations at 42 CFR 447.301.

Oklahoma SPA 87-18 in part implements the drug reimbursement regulations published July 31, 1987. The State's plan amendment indicates that the State will use the Average Wholesale Price (AWP), as provided by a pricing resource contractor, for the purpose of establishing the estimated acquisition cost (EAC) levels. The State argues that it has used this method of determining the estimated acquisition cost for years and that modification of this methodology may result in a reduction of availability of services to Medicaid recipients.

The current rules and the former Maximum Allowable Cost (MAC) regulations require the State agencies to establish EAC levels at "the agency's best estimate of the price generally and currently paid by providers for a drug marketed or sold by a particular manufacturer or labeler in the package size of the drug most frequently purchased by providers." This is necessary because, in general, the State payments for drugs may not exceed, in the aggregate, payment levels derived by applying the lower of: the cost of the drug plus a reasonable dispensing fee or the provider's usual and customary charge to the general public. HCFA believes that use of the AWP without modification does not comport with the definition of "estimated acquisition cost" (EAC) in 42 CFR 447.301 because of a preponderance of evidence which demonstrates that the AWP overstates the price that providers actually pay for drug products. Thus, use of an unmodified AWP cannot constitute an agency's "best estimate" of current price. It also does not comport with section 1902(a)(30) of the Act requiring the State plan to assure that payments are consistent with efficiency, economy, and quality of care.

The notice to Oklahoma announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

September 28, 1988.

Mr. Phil Watson,

Director of Human Services, Department of Human Services, Sequoyah Memorial Office Building, P.O. Box 25352, Oklahoma City, OK 73125.

Dear Mr. Watson: I am advising you that your request for reconsideration of the decision to disapprove a portion of Oklahoma State plan amendment 87-18 (SPA 87-18) was received on August 30, 1988.

Oklahoma SPA 87-18 implements the drug reimbursement regulations published on July 31, 1987. The State's plan amendment indicates, in part, that the State will use the average wholesale price (AWP), as provided by a pricing resource contractor, for the purpose of establishing the estimated acquisition cost (EAC) levels.

The issues in this matter are whether use of an unmodified AWP constitutes the agency's "best estimate" of current prices as required by 42 CFR 447.301 and, therefore, whether payments resulting from the use of the unmodified AWP are consistent with efficiency, economy, and quality of care as required by section 1902(a)(30) of the Social Security Act.

I am scheduling a hearing on your request to be held on November 15, 1988, at 10:00 a.m. in Room 1950, 1200 Main Tower, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 45 CFR section 201.4 and Part 213.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please

notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966–4470.

Sincerely,

William L. Roper,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 45 CFR 201.4)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 28, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88–22750 Filed 10–3–88; 8:45 am]

BILLING CODE 4120–03–M

Office of Human Development Services

Administration on Developmental Disabilities; Statement of Organization, Functions, and Delegations of Authority

This Notice amends Part D of the Statement of Organization, Functions, and Delegations of Authority of the Administration on Developmental Disabilities, Chapter DF, as published in the **Federal Register** on July 23, 1985 (50 FR 30014), as follows: (1) To revise DF.10. Organization to add the Office of the Associate Commissioner for Program Operations and Development, (2) to revise DF.20. Functions to establish an Office of the Associate Commissioner for Program Operations and Development, and (3) to make other minor administrative changes throughout DF to reflect current legislative references and organizational name changes.

Chapter DF, as published in the **Federal Register** July 23, 1985, should be revised by deleting DF.10. Organization (50 FR 30014); DF.20. Functions (50 FR 30014), Office of the Commissioner (50 FR 30014), B. Management Services Staff (50 FR 30015), C. Program Operations Division (50 FR 30015), and D. Program Development Division (50 FR 30015), and by adding the following:

DF. 10. *Organization.* The Administration on Developmental Disabilities is under the direction of the Commissioner, who reports directly to the Assistant Secretary for Human Development Services. The Administration on Developmental Disabilities consists of:

Office of the Commissioner
  Management Services Staff
Office of the Associate Commissioner
    for Program Operations and
    Development
  Program Operations Division
  Program Development Division
Regional Offices of the Administration
    on Developmental Disabilities
  Regions III, VI, VII, and IX

DF.20. *Functions.* A. *Office of the Commissioner* provides executive leadership and direction to ADD. Establishes goals and objectives for programs for developmentally disabled persons; directs the administration of formula and discretionary grant programs of the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 600 *et seq.*, as amended by Pub. L. 100–146. Provides technical assistance and initiates policy relative to the provision of services to persons with developmental disabilities under the ADD authorizing statute; serves as advisor to the Assistant Secretary on programs, issues and problems affecting handicapped individuals and on the concerns of developmentally disabled persons. Assures consideration of the rights and needs of the developmentally disabled and other handicapped individuals in Human Development Services program planning and policy development.

Serves as a focal point on matters and issues concerning developmentally disabled persons for the various OHDS Regional Offices, other ADD Divisions, and other OHDS Headquarters staff. Facilitates interagency program coordination and program integration to meet the needs of developmentally disabled persons. Formulates policies affecting the developmentally disabled and identifies services to promote independence, productivity, community integration and to assure their rights and entitlements. Coordinates with OHDS Regional Administrators on program issues and progress affecting their regions and coordinates Developmental Disabilities (DD) Program objectives requiring involvement of other OHDS programs at the regional level.

Reviews and analyzes reports and makes contacts with governmental and non-governmental agencies and individuals to secure necessary information for policy development.

A.1. *Management Services Staff* plans, coordiantes, and controls ADD policy, planning, and management activities. Manages the development of legislative proposals, regulations and policies for ADD. Develops and recommends the implementation of policies in coordination and consultation with the Office of Policy, Planning, and Legislation (OPPL), OHDS.

In coordination with OPPL and the Office of Management Services (OMS), in the Office of Human Development Services, monitors the execution of program plans consistent with the Department's requirements and OHDS procdures. Formulates budget and legislative plans consistent with Departmental and ADD requirements.

Coordinates the reporting by ADD units to the Department of Health and Human Services/Office of Human Development Services (OHDS) management system, including reports on the overall ADD programs as required by the Department and the Congress and developed within ADD.

Tracks financial status of all programs and salaries and expenses accounts and provides financial data to the Commissioner. Provides funds control for program and salaries and expenses accounts to include making fund commitments, obligations, and reconciliation of accounts with the Department's accounting system. Furnishes assistance to program specialists on Departmental financial management and on development of ADD fiscal and budget procedures; coordinates with appropriate HDS staff offices in carrying out these functions. Performs audit coordination activities for ADD audits, assuring appropriate response and coordination with HDS.

Provides a wide range of management and administrative services in support of all ADD programs and activities. Expedites the progress of all procurements and personnel actions. Serves as the ADD Executive Secretariat, controlling the flow of correspondence, including coordination of Freedom of Information Act requests. Coordinates with appropriate OHDS units in implementing administrative requirements and procedures.

In coordination with the Office of Public Affairs/OHDS, develops a strategy for increasing public awareness of the needs of persons with developmental disabilities and programs designed to meet their needs.

Oversees all ADD data collection, information, maintenance, and preparation of final reports on program data. Carries out special projects, including gathering information and assisting in preparation of briefings and reports. Coordinates preparation of the ADD statistical budget submission and related OMB forms clearance activities.

Serves as liaison with national consumer organizations representing developmentally disabled constituents; advising the Commissioner on matters and concerns of consumer representative groups, including inter-governmental representatives; provides liaison activity between national

organizations and program administrative offices; and provides coordination of consumer representatives' involvement in planning and program policy direction for the ADD program.

B. *Office of the Associate Commissioner for Program Operations and Development.* Provides direction, executive management and program coordination of ADD programmatic functions including the Basic State Grant and Protection and Advocacy formula grant programs administered by the Division of Program Operations and the discretionary Projects of National Significance and University Affiliated Programs.

Directs and coordinates the interpretation of laws and development of policies and implementation procedures for the formula and discretionary grant programs. Oversees and assists in the identification and resolution of policy and program issues.

Directs and coordinates the development of procedures and methods for the monitoring and analysis of State implementation activities, and oversees the application of research, development and evaluation activities in support of program monitoring and analysis.

Directs and coordinates the development of Federal guidelines, criteria and procedures which govern activities authorized by the Act under the Basic State Grant and Protection and Advocacy Programs, Projects of National Significance and University Affiliated Programs.

Serves as liaison with national consumer organizations representing constituents with developmental disabilities. Advises the Commissioner on matters and concerns of consumer representative groups, including inter-governmental representatives. Provides liaison activity between national organizations and program divisions. Provides coordination of consumer representatives' involvement in planning and program policy direction for the Developmental Disabilities Program.

Directs and coordinates the development and implementation of long and short range plans, goals, and objectives. Oversees the development of interagency agreements and jointly funded service initiatives and their execution and follow-up.

Directs and coordinates the provision of program and administrative guidance to Regional staff on matters related to the implementation of the Developmental Disabilities Act, and oversees liaison and routine communication with Regional Offices to facilitate the flow of information between Central Office and the Regional Offices and maximize program quality.

Directs and coordinates the development of priorities for Projects of National Significance and oversees the process for the award of grants which address those priorities. Ensures that priorities for experimental programs are responsive to State and local concerns and programmatic needs.

Oversees the activities of the Interagency Committee on Developmental Disabilities and coordinates the activities of the Federal agencies on the Committee.

B.1. *Program Operations Division* is responsible for the development of Federal guidelines, criteria and procedures which govern activities authorized by the Act under the Basic State Grants Program and the Protection and Advocacy Grants Program. Provides coordination and guidance for programs applicable to individuals with developmental disabilities.

Develops procedures and methods for monitoring and analysis of State Plans under the Basic State Grants Program, including State employment priority area activities, to assure consistent application of ADD policies and procedures. Carries out routine and special analysis of State Plans. Monitors the Basic State Grants Program and Protection and Advocacy Grants Program, developing reports on progress, accomplishments and problems; preparing recommendations for actions that will further the ADD program goals and objectives; and, initiates action to resolve identified problems.

Serves as liaison with national consumer organizations representing developmentally disabled constituents; advising the Commissioner on matters and concerns of consumer representative groups, including inter-governmental representatives; provides liaison activity between national organizations and program administrative offices; and provides coordination of consumer representatives' involvement in planning and program policy direction for the ADD program.

Advises Commissioner on trends, issues, and progress; contributes to the development and implementation of long and short range plans, goals, and objectives. Develops strategies and designs for joint review of State Plans of other Federal/State program services. Identifies potential areas for development of interagency agreements and jointly funded service initiatives for State program services/activities. Serves as a focal point for the initiation, execution, and administration, monitoring and follow-up of interagency agreements and resulting activities.

Provides administrative and committee management support to the National Council on the Handicapped and other Federal commissions or interagency committees established by statute or administrative policy. Plans and coordinates special conferences involving Federal and non-Federal agencies.

Provides program and administrative guidance to Regional staff on matters pertaining to the Basic State Grants Program and the Protection and Advocacy Grants Program. Maintains liaison and routine communication with the Regional Offices to facilitate the flow of information between Central Office and the Regional Offices concerning State developmental disabilities activity and to assist the Commissioner in maximization of program quality. Assists in the identification and resolution of policy and program issues.

Develops and maintains a comprehensive infomation base on programs and activities for persons with developmental disabilities on a national basis, as well as individual State profiles.

B.2. *Program Development Division.* Provides program development services, including program evaluation, environmental reform, specialized services initiatives, and demonstration projects. Provides direction to assist applicants for discretionary grants and contracts authorized under the Act; reviews discretionary grants for the Commissioner; facilitates State review and comment on applications for discretionary grants and contracts; makes recommendations to the Commissioner on requests for discretionary grants and contracts and assists in monitoring and evaluating national level discretionary grants.

Plans for and implements experimental program services based on feedback from State and local organizations on program needs. Formulates and prepares annual demonstration and evaluation plans. Coordinates and administers the University Affiliated Programs (UAP's) activities, and develops quality assurance criteria for the UAP Program.

Originates cross-cutting research, demonstration and evaluation initiatives with other units of ADD, OHDS, HHS, and other governmental Departments.

Develops and initiates guidelines, issuances and actions with team participation by other units of ADD, OHDS, HHS, and other governmental agencies to fulfill the mission and goals

of the Developmental Disabilities Assistance and Bill of Rights Act, as amended.

Works with the Small and Disadvantaged Business Utilization Specialist in the Office of Equal Opportunity and Civil Rights to identify minority-owned firms that have capabilities to perform contracts and advises such firms about Add programs. In liaison with HDS/OMS and OPPL, is reponsible for discretionary grants and contracts management, technical assistance, and training activities. Reviews and analyzes data and information regarding developmental disabilities programs and services, and coordinates the dissemination of project results and information to other interested agencies and the public.

Serves as liaison with national consumer organizations representing developmentally disabled constituents; advises the Commissioner on matters and concerns of consumer representative groups, including intergovernmental representatives; provides liaison activity between national organizations and program administrative officer; and provides coordination on consumer representatives' involvement in planning and program policy direction for the ADD program.

Coordinates national program trends with other OHDS programs and HHS agencies. Studies, reviews and analyzes other Federal programs providing services applicable to persons with developmental disabilities for the purpose of integrating and coordinating programs.

Provides leadership and staff support for a Task Force on Board and Care. This includes providing administrative and technical supervision of staff assigned to the Task Force by other Federal agencies and serving as the focal point for the Department for information on board and care to public and private agencies and the general public. Develops guidelines and promotes the adoption of appropriate standards for institutions and service providers in the area of board and care.

Serves as the focal point for activities and ADD requirements in support of the Decade of the Disabled.

Date: September 11, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services

[FR Doc. 88-22773 Filed 10-3-88; 8:45 am]

BILLING CODE 4130-01-M

Social Security Administration

Finding Regarding Foreign Social Insurance or Pension System—Syria

AGENCY: Social Security Administration, HHS.

ACTION: Notice of finding regarding Foreign Social Insurance or Pension System—Syria.

Finding: Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in section 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(1) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(2) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Commissioner has redelegated that authority to the Director of the International Policy Staff. Under that authority the Director of the International Policy Staff has approved a finding that Syria, beginning December 8, 1987, has a social insurance system of general application in effect which pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death, but that under this social insurance system, citizens of the United States who are not citizens of Syria and who leave Syria, are not permitted to receive such benefits, or their actuarial equivalent, at the full rate without qualification or restriction while outside that country.

Accordingly, it is hereby determined and found that Syria has in effect, beginning December 8, 1987, a social insurance system which meets the requirements of section 202(t)(2)(A) of the Social Security Act (42 U.S.C. 402(t)(2)(A)), but not the requirements of section 202(t)(2)(B) of the Act (42 U.S.C. 402(t)(2)(B)).

This finding also affects the application of subparagraphs (A) and (B) of section 202(t)(4) of the Social Security Act (42 U.S.C. 402(t)(4)(A) and (B)). That section provides that, subject to certain residency requirements of section 202(t)(11), section (t)(1) shall not be applicable to benefits payable on the earnings record of an individual who has 40 quarters of coverage under Social Security or who has resided in the United States for a period or periods aggregating 10 years or more. However, the provisions of subparagraphs (A) and (B) of section 202(t)(4) shall not apply to an individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies the provisions of subparagraph (A) of section 202(t)(2) but not the provisions of subparagraph (B) of section 202(t)(2).

By virtue of the finding with respect to section 202(t)(2) herein, the provisions of subparagraphs (A) and (B) of section 202(t)(4) do not apply to citizens of Syria.

FOR FURTHER INFORMATION CONTACT: Roy G. Hatch, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-3566.

(Catalog of Federal Domestic Assistance Programs No. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security Survivors Insurance)

Elizabeth K. Singleton,

Director, International Policy Staff.

[FR Doc. 88-22756 Filed 10-3-88; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[AA-650-08-4121-09]

Federal-State Coal Advisory Board; Charter Renewal

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the Charter for the Federal-State Coal Advisory Board. Under the renewed

charter the Board will continue its role of advising the Department on Federal coal leasing matters of a national scope.

The Certification of renewal is published below.

Certification

I hereby certify that the renewal of the Federal-State Coal Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities listed in 43 CFR 3400.0–3 and by Departmental policy for Federal-State cooperation concerning the Federal coal management program.

Donald Paul Hodel.

Secretary of the Interior

[FR Doc. 88–22770 Filed 10–3–88; 8:45 am]

BILLING CODE 4310–01–M

New School Facilities Construction Application

September 28, 1988.

AGENCY: Office of Construction Management, Interior.

ACTION: Notice that applications for new school construction may be submitted for consideration for fiscal year 1991.

SUMMARY: Applications for New School Facilities Construction may be submitted for evaluation and ranking using the guidelines entitled, "Instructions and Application for New School Construction," made available through the Office of Construction Management (OCM), as noticed in 53 FR 3080, February 3, 1987. All new school construction applications will be evaluated and considered for priority ranking based on criteria developed by OCM in accordance with the guidelines, as noticed in 53 FR 12470–12471, April 14, 1988. Highly ranked projects will be considered for advance planning and design in accordance with availability of funds. A validation study will be made to analyze the cost benefits of replacement versus renovation and other project justification information.

Applications must be received by OCM by December 1, 1988, to be considered for Fiscal Year 1991. Incomplete applications or applications received without a supporting Tribal resolution will not be ranked.

The "Instructions and Application for New School Construction" is available upon request through the Office of Construction Management and from the Bureau of Indian Affairs (BIA) Area and Agency office and the BIA Facilities Management and Construction Center, P.O. Box 1248, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Arthur M. Love, Jr., Director, Office of Construction Management, Department of the Interior, 18th & C Streets, NW., Mail Stop 2415, Washington, DC 20240, (202) 343–3403.

Rick Ventura,

Assistance Secretary Policy, Budget & Administration.

[FR Doc. 88–22791 Filed 10–3–88; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

[OR–050–4322–02:GP8–268]

Oregon: Prineville District Grazing Advisory Board Meeting

September 26, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: There will be a Prineville District Grazing Advisory Board meeting on Thursday, November 3, 1988. The meeting will be held at 10:00 a.m. at the Cinnabar Restaurant, 123, E. Third Street, Prineville, Oregon.

Topics to be discussed will include:

1. Grazing decision in the Brothers/LaPine Resource Management Plan
2. Two Rivers Resource Management Plan revision process
3. Allotment evaluation results
4. Advisory Board expenditures
5. Allotment management plans completed in 1988 and planned for 1989
6. Rangeland developments completed in 1988 and planned for 1989
7. District riparian program including FY 89 add-on funding

Donald L. Smith,

Acting District Manager.

[FR Doc. 88–22769 Filed 10–3–88; 8:45 am]

BILLING CODE 4310–33–M

[CA–067–08–4333–10]

Establishment of Supplementary Rules, Imperial Sand Dunes Recreation Area, Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of supplementary rules.

SUMMARY: The primary purpose of these supplementary rules is enhancement of public safety in the Imperial Sand Dunes Recreation Area. The need for these rules was identified during a series of public meetings held during preparation of the Imperial Sand Dunes Recreation Area Management Plan, completed in 1987. Safety hazards and methods of reducing them were high priority planning issues identified by participants at the planning meetings.

Poor visibility of off-highway vehicles (OHV) in the dunes, excessive speed near camping areas and along major "sand highway" use corridors adjacent to paved roads, and hazards from broken glass were identified as the three major safety issues. Meeting participants called for new rules requiring whip masts and flags to enhance vehicle visibility, establishing speed limits on major use corridors, and prohibiting of glass beverage containers. Accordingly, the draft management plan included prescriptions (2–8, 2–11, and 2–16) recommending adoption of these supplementary rules. Public comment on the draft plan was supportive of the rules, and the prescriptions were approved as part of the final management plan in July 1987.

The supplementary rule requiring whip masts and flags has been worded to complement and be consistent with a similar State regulation affecting Pismo Dunes State Recreation Area (14 CCR 4609.1(c)). Similarly, the glass container rule has been patterned after a similar State regulation affecting the San Diego Coast State Beaches (14 CCR 4333). Many visitors to the Imperial Sand Dunes regularly visit these state areas and are already familiar with the subject rules. The 15 m.p.h. speed rule also complements other State laws (38310 CVC) and regulations regarding operation of OHVs in congested areas.

These supplementary rules apply to public lands in the Imperial Sand Dunes Recreation Area. Generally, the recreation area encompasses public lands situated from one mile north of Mammoth, Wash on the north to the Mexican border on the south, and from the Southern Pacific Railroad and Ogilby Road on the east to the old (abandoned) Coachella Canal on the west. However, in a number of areas the boundary extends beyond these general limits. A precise boundary map is available at the information address specified toward the end of this notice.

In addition to the regulations contained in 43 CFR Part 8365 and additional supplementary rules established previously **Federal Register**, Monday July 30, 1984, p. 30374, and Thursday, January 30, 1986, pp. 3851–3853), the following supplementary rules shall apply to the Imperial Sand Dunes Recreation Area:

1. All off-highway motor vehicles registered under California Vehicle Code Section 38010 or other off-road vehicles as defined in 43 CFR 8340.0–

5(a) shall be equipped with a whip, which is any pole, rod, mast, or antenna, that is securely mounted on the vehicle and which extends at least eight (8) feet from the surface of the ground when the vehicle is stopped. When the vehicle is stopped, the whip shall be capable of standing upright when supporting the weight of any attached flags. At least one whip attached to each vehicle shall have a solid red or orange colored safety flag with a minimum size of six (6) inches by twelve (12) inches and be attached within ten (10) inches of the top of the whip. Flags may be of penant, triangle, square, or rectangular shape. Club or other flags may be mounted below the safety flat or on a second whip.

2. No person shall operate an off-highway motor vehicle or other off-road vehicle in excess of 15 miles per hour on public lands within 500 feet of the edge of the pavement of State Highway 78, the Imperial Sand Dunes (Gecko) Road, access roads within the Gecko and Roadrunner recreation sites, or the Grays Well Road.

3. Unless otherwise authorized by the Area Manager, El Centro Resource Area, no person shall have, possess, or use any cup, tumbler, bottle, jar, or container of whatever nature, empty or not, which is made of glass and used for carrying or containing any liquid for drinking purposes, except that persons may pick up glass containers discarded by others and remove or deposit same in approved trash receptacles.

EFFECTIVE DATE: December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Steve Nelson, Outdoor Recreation Planner, Bureau of Land Management, El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243, (619) 352-5842 (FTS 895-6616).

SUPPLEMENTARY INFORMATION: The authority for establishing supplementary rules is contained in 43 CFR 8365.1-6. Copies of these rules will be available in the El Centro Resource Area Office and at the Cahuilla Ranger Station in the Imperial Sand Dunes Recreation Area. These rules will also be posted near and/or within the lands, sites, or facilities affected in the Imperial Sand Dunes Recreation Area. Violations of supplementary rules established under authority of 43 CFR 8365.1-6 are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, under authority of 43 CFR 8360.0-7.

Dated: September 13, 1988.

Gerald E. Hillier,

District Manager.

[FR Doc. 88-22784 Filed 10-3-88; 8:45 am]

BILLING CODE 4310-40-M

[NM 940-08-4111-13; NM NM 56263]

Proposed Reinstatement of Terminated Oil and Gas Lease; Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 43 CFR 3108.2-3, Richard R. Conarroe petitioned for reinstatement of oil and gas lease NM NM 53993 covering the following described lands located in:

Lea County, New Mexico
T. 19 S., R. 33 E., NMPM
Sec. 33: SE¼
Containing 160.00 acres, more or less.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $5.00 per acre per year and royalties shall be at the rate of 16 2/3 percent. Reimbursement for cost of the publication of this notice paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, November 1, 1987.

Date: September 20, 1988.

Dolores L. Vigil,

Acting Chief, Adjustment Section.

[FR Doc. 88-22841 Filed 10-3-88; 8:45 am]

BILLING CODE 4310-FB-M

[WY-920-08-411-15; W-97070]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

September 26, 1988.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatment of oil and gas lease W-97070 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16 2/3 percent, respectively.

The lessee has paid the required $5.00 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements fro reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-97070 effective February 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 88-22785 Filed 10-3-88; 8:45 am]

BILLING CODE 4310-22-M

[CA-010-4212-13; CA 20050, CA 23467]

Reality Action; Exchange of Public and Private Lands in San Luis Obispo County, CA; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction for notice of realty action, CA 20050, CA 23467.

SUMMARY: The following Changes Are Made to the Original Notice Published on Thursday, December 3, 1987 in Vol. 52, No. 232 of the **Federal Register.**

Under "lands suitable for exchange" delete T.26S., R.10E., R.10E., Sec. 2 *Lot 3* (private land). Under T.26S., R.11E., Sec. 7 should read "N½ Lot 1 of SW¼, * * * ". At the end of the list of "lands suitable for * * * exchange", it should read "*Some* mineral rights owned by the United States * * * ". Delete "subject to the term of existing oil and gas leases". Add "Some of the above lands may be retained by the United States".

Under "In exchange for these lands * * * it should read "In exchange for these lands, the United States will acquire *an equal value of lands within the Carrizo Natural Heritage Reserve.* The Reserve area encompasses approximately 180,000 acres in the southern Carrizo Plain. It is bounded on the east, west, and the south by the Temblor and Caliente Ranges, up to an elevation of approximately 3,000 feet. It is bounded on the north by Soda Lake and San Diego Creek Road." Delete the portion of the original notice following this sentence down to "Supplementary Information."

Date: September 26, 1988.

Glenn A. Carpenter,

Caliente Resource Area Manager

[FR Doc. 88-22774 Filed 10-3-88; 8:45 am]

BILLING CODE 4310-40-M

[UT-020-07-4333-10]

Establishment and Implementation of the Central Pacific Railroad Grade Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment and implementation of the Central Pacific Railroad Grade Management Plan.

SUMMARY: Notice is hereby given that the Central Pacific Railroad Grade Management Plan has been signed and will be implemented to protect, preserve and interpret the cultural and historic resources along the abandoned, Central Pacific Railroad grade right-of-way.

Authority: The authorities for the management plan are: 18 U.S.C. 1361; 36 CFR Parts 60, 63, 800; 40 CFR Part 1500; 43 CFR Parts 3, 7, 3809, 8000, 8100; E.O. 11593, 11644; Federal Land Policy and Management Act, 1976; Sikes Act, 1974; Antiquities Act, 1906; National Historic Preservation Act, 1966; Archaeological and Historic Preservation Act, 1974; Archaeological Resources Protection Act, 1979; National Environmental Policy Act, 1969.

The decision to write and implement the plan comes from the Federal Land Policy and Management Act, section 202(c)(3), which provides for the designation and protection of Areas of Critical Environmental Concern (ACEC). The impetus, however, to begin the plan was provided in 1986 when the Box Elder RMP designated the grade as an ACEC. At that time, a **Federal Register** Notice was published giving ACEC township, range and section descriptions.

SUPPLEMENTARY INFORMATION: This plan will manage the Central Pacific Railroad Grade ACEC, an abandoned 90 mile long segment (with 22 associated town and station sites) of the original 1869 Central Pacific line. The ACEC offers a tremendous cultural, historic, interpretive and recreational potential. Nowhere in the United States is there a continuous and unspoiled segment of a historically significant railroad as this ninety mile section between Lucin and the Golden Spike National Historic Site, Utah. The people, events and physical remains of what was then called the Promontory Branch compose a fascinating chapter in America's cultural and historic heritage. Today the grade remains as a legacy of 19th century railroading genius as well as repository of the cultural patterns and lifestyles that grew to maturity during the first 73 years of Western American railroading.

The purpose of the regulations in the management plan is to minimize conflicts between visitor use and historic and cultural resources, and to provide safe interpretive access along the grade.

Certain aspects of the plan will necessitate amendments to the Box Elder Resource Management Plan (RMP), which will be evaluated in an environmental assessment and processed in the normal way for RMP amendments. These amendments are: Change the Area of Critical Environmental Concern designation from a 20 foot to 400 foot wide corridor, designate the ACEC as "limited" to off-road vehicle use, and designate a mile wide corridor as VRM Class 2, and the viewshed from the Grade as VRM Class 3. These changes can only apply to the portions of the Grade which are administered by BLM. However, one of the stated goals of the management plan is to acquire ownership, eastment, or cooperative agreements from private landowners and the State, which would be managed the same as public lands. The maximum acreage would then be 4,360 acres for the ACEC.

FOR FURTHER INFORMATION CONTACT: Lewis Kirkman or Shelley J. Smith, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 524-5348.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 88-22794 Filed 10-3-88; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-020-08-4213-01]

Phoenix District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Phoenix District Advisory Council.

DATE: November 2, 1988.

ADDRESS: 2015 West Deer Valley Road, Phoenix, Arizona.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets November 2 at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, at 9:00 a.m. to discuss and make recommendations on various public land issues.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978. The agenda for the meeting includes:

—Kingman Resource Area Resource Management Plan
—Land Exchanges
—Barry M. Goldwater Range
—Empire Ranch
—Advisory Council Projections
—BLM Management Updates
—Business from the Floor
—Public Comments and Statements
—Future Meetings and Agenda Topics

SUPPLEMENTARY INFORMATION: This is a public meeting and the Bureau of Land Management welcomes the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters.

Date: September 26, 1988.

Paul J. Buff,

Acting Associate District Manager.

[FR Doc. 88-22743 Filed 10-3-88; 8:45 am]

BILLING CODE 4310-32-M

[NM-030-08-4212-20 RG02]

Sale of Public Lands In Socorro County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) announces that the following described parcels of land have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) (FLPMA) at no less than the appraised fair market value shown. The parcels are isolated, difficult, and uneconomical to manage as part of the public lands, and are not suitable for management by another Federal department or agency. The sale is consistent with the Bureau of Land Management's planning efforts, and the public interest will be served by offering this land for sale.

Sale Method

Parcels 87-1 through 87-8 will be offered for sale using competitive bidding procedures (43 CFR 2711.3-1). On parcels 87-9 and 87-10, the bidding will be modified to allow bids from designated bidders only (43 CFR 2711.3-2). Parcels 87-11 through 87-27 will be offered through direct sale procedures (43 CFR 2711.3-3) not less tban 60 days from publication of this Notice.

Parcel No.	Serial No.	Legal descripyion, NMPM	Acreage	Appraised value	Method of sale
87-1	NM NM 66360	T. 4 S., R. 1 E., Sec. 7, Lot 37	16.20	$12,200	Competitive
87-2	NM NM 66343	T. 4 S., R. 1 E., Sec. 9, Lot 12, aka Tr. 81, MRGCD Map 168	0.50	1,000	Do.
87-3	NM NM 67563	T. 4 S., R. 1 E., Sec. 20, Lot 41, aka Tr. 40 and portion of State Highway, MRGCD Map 170.	3 16	6,300	Do.
87-4	NM NM 67565	T. 4 S., R. 1 E, Sec. 20, Lot 32 (1.95 ac.); and Sec. 19, Lot 15 (0.25 ac.)	2.20	3,850	Do.
87-5	NM NM 59334	T. 4 S., R. 1 E., Sec. 32, Lot 29	10.49	13,150	Do.
87-6	NM NM 59347	T. 4 S., R. 1 E., Sec. 32, Lot 32	5.70	8,550	Do.
87-7	NM NM 64758	T. 4 S., R. 1 E., Sec. 6, Lot 83	7.12	10,680	Do.
87-8	NM NM 64789	T. 4 S., R. 1 E., Sec. 8, Lot 64, aka a portion of Old Road, MRGCD Map 158.	0.23	2.50	Do.
87-9	NM NM 66319	T. 4 S., R. 1 E., Sec. 9, Lot 11, aka portion of old Bosquecito Ditch, MRGCD Map 168.	0.11	2.50	Modified Competitive
87-10	NM NM 66369	T. 4 S., R. 1 E., Sec. 6, Lot 74	0.06	25.00	Modified Competitive
87-11	NM NM 66363	T. 4 S., R. 1 E., Sec. 7, Lots 27 and 31, aka portion of State Highway, MRGCD Map 168.	4.27	10.00	Direct to NM State Highway Department.
87-12	NM NM 66362	T. 4 S., R. 1 E., Sec. 7, Lot 29, aka portion of Luis Lopez Ditch, MRGCD Map 168.	1.40	10.00	Direct to Middle Rio Grande Conservancy District.
87-13	NM NM 66364	T. 4 S., R. 1 E., Sec. 19, Lot 13, aka portion of AT&SF Railroad, MRGCD Map 170.	0.08	10.00	Direct to AT&SF Railroad.
87-14	NM NM 67577	T. 4 S., R. 1 E., Sec. 7, Lots 30 and 35	1.34	(1)	Direct to Teodoro and Rachel Saavedra.
87-15	NM NM 69968	T. 4 S., R. 1 E., Sec. 29, Lot 18	0.004	25.00	Direct to Ernest F. Sichler.
87-16	NM NM 67561	T. 4 S., R. 1 E., Sec. 20, Lot 44, aka portion of Tr. 41A and an lotted portion of land and part of State Highway, MRGCD Map 170.	0.81	50.00	Direct to Glenn Perry.
87-17	NM NM 67562	T. 4 S., R. 1 E., Sec. 20, Lot 29 (1.04 ac.) and Lot 40 (0.10 ac.), aka Tr. 39 and portion of State Highway, MRGCD Map 170.	1.14	2,280	Direct to H. Elmer and Denise Tolliver Trust.
87-18	NM NM 67564	T. 4 S., R. 1 E., Sec. 20, Lot 37, aka Tr. 14B, MRGCD Map 170	0.17	50.00	Direct to heirs of Alisandro Gonzales.
87-19	NM NM 67566	T. 4 S., R. I E., Sec. 17, Lot 30 (23.95 ac.); Sec. 29, Lot 17 (0.43 ac.), aka portion of San Antonio Riverside Drain and Canal and unlotted land, MRGCD Map 169 and portion of Luis Lopez Drain A on MRGCD Map 172.	24.38	61.00	Direct to Middle Rio Grande Conservancy District.
87-20	NM NM 67570	T. 4 S., R. 1 E., Sec. 17, Lot 28 (0.14 ac.), Lot 29 (2.93 acs.); Sec. 20, Lot 31 (3.06 ac.), Lot 42 (1.73 acs.), and Lot 43 (3.03 acs.); Sec. 29, Lot 12 (0.09 ac.) and Lot 13 (4.48 acs.), aka portion of AT&SF Railroad, MRGCD Maps 169, 170, and 172.	15.46	39.00	Direct to AT&SF Railroad.
87-21	NM NM 67571	T. 4 S., R. 1 E., Sec. 20, Lot 38 (0.04 ac.), and Lot 39 (0.21 ac.), aka portion of Tr. 13B, MRGCD Map 170.	0.25	50.00	Direct to Mrs. Rosalio Romero.
87-22	NM NM 67601	T. 4 S., R. 1 E., Sec. 20, Lot 33, aka portion of Tr. 13B, MRGCD Map 170.	0.05	25.00	Direct to Valentino and Helen Rivera.
87-23	NM NM 67602	T. 4 S., R. 1 E., Sec. 20, Lot 34, aka portion of Tr. 13B, MRGCD Map 170.	0.02	25.00	Direct to Eddie and Dolores Rivera.
87-24	NM NM 61188	T. 2 S., R. 1 W., Sec. 12, Lot 51	0.95	25.00	Direct to Damacio Gutierrez.
87-25	NM NM 67569	T. 2 S., R. 1 W., Sec. 12, Lot 54	0.48	25.00	Direct to heirs of J.B. Kelly Estate.
87-26	NM NM 66356	T. 4 S., R. 1 E., Sec. 6, Lot 81	0.35	25.00	Direct to John and Peggy Cardwell.
87-27	NM NM 69966	T. 4 S., R. 1 E., Sec. 7, Lot 39	1.07	(1)	Direct to Charles and Jessie Headen and Herbert and Alice Cushing.

(1) To be determined.

Sales Procedures

The sale of parcels 87–1 through 87–8 will be by competitive sealed bids followed by oral bidding. On parcels 87–9 and 87–10, the bidding will be modified to allow bids from designated bidders named below, only. Sealed bids will be considered only if received in the Socorro Resource Area Office, 198 Neel Avenue NW., Socorro, New Mexico 87801, before 10:00 a.m. on December 6, 1988, the day of the sale. Bids of less than fair market value will be rejected. Oral bids will be received at 10:30 a.m., following the opening of all sealed bids, at the same place on the same sale date. The highest qualified sealed bid will be publicly declared by the Authorized Officer. The highest qualified seal bid will then become the starting point for the oral bidding. If no sealed bids are received, the oral bidding will start at the appraised fair market value. In the absence of oral bids, the highest qualified sealed bid will establish the sale price for that parcel. In the event that two or more sealed bids are received containing valid bids of the same amount for the same parcel, and no higher oral bid is received for that parcel, the determination of which is to be considered the highest designated bid will be by supplemental biddings. In such a case, the high bidders will be allowed to submit oral or sealed bids as designated by the Authorized Officer. After oral bids are received, the highest qualifying bid, designated by type, whether sealed or oral, shall be declared by the Authorized Officer.

Bidders must be 18 years of age or over and United States citizens, and corporations must be subject to the laws of any state or of the United States. Apparent high bidders must submit proof of these requirements within 15 days after the sale date. Bids must be made by the principal or his duly qualified agent.

Each sealed bid must be written or typed and accompanied by postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than 10 percent or more than 30 percent of the amount of the bid. The sealed bid envelope containing the bid and the required amount must be marked in the lower left-hand corner as follows:

Public Sale Bid Parcel _____
Serial No. _____
Sale held _____, 1988.
(Date)

Each successful oral bidder will be required to pay not less than one-fifth of

the amount of the bid immediately following the sale. Payment must be by cash, personal check, bank draft, money order, or any combination of these. Successful bidders, whether such bid is oral or sealed, will be required to pay the remainder of the sale price prior to expiration of 180 days from the date of the sale. Failure to submit the full sale price within the above specified time limit will result in cancellation of the sale of the specific parcel and the deposit will be forfeited and disposed as other receipts of sale.

All sealed bids will be either returned, accepted, or rejected within 30 days of the sale date. Parcels not sold on the day of the sale will be reoffered for sale every first Tuesday of each month, same time and place, by the same sale procedures described above until sold or until June 6, 1989, at close of business.

In the event that the Authorized Officer rejects the highest qualified bid or releases the bidder from it, the Authorized Officer shall determine whether the public lands shall be withdrawn from the market or be reoffered.

Parcels 87–9 and 87–10 will be offered as modified competitive sales to designated bidders. Only bids from the following designated bidders will be accepted on Parcel 87–9:

1. Ambrocio Armijo, Box 1878, Socorro, NM 87801
2. Glen Kendall, Box 1303, Socorro, NM 87801
3. Ludvig Nielsen, Box 2461, Las Cruces, NM 88004

Only bids from the following designated bidders will be accepted on Parcel 87–10:

1. Danny Romero
2. Amado Gallegos

Terms and Conditions

Terms and conditions applicable to the sale are:

1. The patents, when and if issued, will contain a reservation to the United States for ditches and canals.

2. All minerals will be reserved to the United States together with the right to prospect for, mine, and remove the minerals.

3. All patents will be issued subject to existing access road rights-of-way and easements.

4. On parcel 1, the patent will be issued with a clause protecting the Federal Government from flooding from an arroyo.

5. On parcels 8, 10, 13, 15, 19, 20, and 24–26, the patents will contain floodplain restrictions in accordance with Executive Order 11988.

6. On parcel 19, the patent will contain wetland restrictions.

7. Parcel 20 is encumbered by portion of the San Antonio Ditch.

8. On parcels 1 and 20, the patent will be issued subject to Right-of-Way NM NM 67576 for a County road.

9. On parcels 3, 16, 17, and 21 the patents will be issued subject to Right-of-Way NM NM 66370 to New Mexico State Highway Department.

10. Parcels 3, 5, and 6 are encumbered by unauthorized Socorro Electric Cooperative power lines.

11. Parcels 3 and 16 are encumbered by the unauthorized San Antonio Water Users Association buried waterline.

12. On parcel 4, the patent will be issued subject to Right-of-Way NM NM 0437575 to American Telephone and Telegraph Company.

13. On parcel 7, the patent will be issued subject to Right-of-Way NM NM 09223 to New Mexico State Highway Department.

14. On parcels 7, 24, and 25, the patent will be issued subject to an existing access road.

15. On parcel 7, the patent will be issued subject to Right-of-Way NM NM 66329 for a Socorro Electric Cooperative power line.

DATES: Interested parties may submit comments regarding the proposed action to the Socorro Resource Area Manager within 45 days of publication of this Notice.

ADDRESS: Comments should be sent to the Bureau of Land Management, Socorro Resource Area Office, 198 Neel Avenue, NW., Socorro, NM 87801.

FOR FURTHER INFORMATION CONTACT: Jon Hertz, Chella Herrera, or Lois Bell at (505) 835–0412.

SUPPLEMENTARY INFORMATION: Additional information concerning the land, terms, and conditions of sale and bidding instruction may be obtained from the Socorro Resource Area Office at the above address.

Comments must reference specific parcel numbers. Adverse comments received on specific parcels will not affect the sale of any other parcel. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Upon publication in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent or other document of conveyance to such land, or upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in land for sale, if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with FLPMA or other applicable law.

Robert R. Calkins,

Associate District Manager.

September 23, 1988.

[FR Doc. 88–22749 Filed 10–3–88; 8:45 am]

BILLING CODE 4310–FB–M

Minerals Management Service

Development Operations Coordination Document; Koch Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Koch Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 8640 and 8641, Blocks 82 and 83, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on September 23, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the

Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: September 26, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–22746 Filed 10–3–88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

[FES 88–41]

Environmental Statements; Availability, etc.: Glacier Bay National Park and Preserve, AK

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Wilderness Recommendation Glacier Bay National Park and Preserve, Alaska.

Pursuant to section 102(c)(2) of the National Environmental Policy Act of 1969, the National Park Service has prepared a final environmental impact statement (EIS) relating to the wilderness recommendation for Glacier Bay National Park and Preserve, Alaska.

SUPPLEMENTARY INFORMATION: Single copies of the final EIS may be obtained from the Regional Director, Alaska Region, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska 99503, Attention: Division of Planning. Copies may also be requested by Telephone: (907) 257–2654.

Copies of the final EIS will also be available for public reading and inspection at the Alaska Regional Office, address above; at the Office of the Superintendent, Glacier Bay National Park and Preserve Headquarters at Gustavus, Alaska 99826; telephone: (907) 6972–2232; at the Alaska Public Lands Information Office in Fairbanks, Alaska, 3rd and Cushman Streets; at the Alaska Resources Library in Anchorage, Alaska, 701 C Street; and at the Office of Public Affairs, National Park Service, United States Department of the Interior in Washington, DC, 18th and C Streets, NW.

Gerald D. Patten,

Associate Director, Planning and Development.

September 28, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

[FR Doc. 88–22834 Filed 10–3–88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 24, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by October 19, 1988.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Los Angeles County

El Greco Apartment, 817 N. Hayworth Ave., Los Angeles, 88002017

Pegler, John Carlton, House, 419 E. Highland Ave., Sierra Madre, 88002019

Riverside County

Woman's Improvement Club Clubhouse, 1101 S. Main St., Corona, 88002014

San Luis Obispo County

Call—Booth House, 1315 Vine St., Robles, 88002031

Price, John, House, Highland Dr. off Price Canyon Rd., Pismo Beach vicinity, 88002013

Solano County

STAMBOUL (Whaling Bark), Foot of W. 12th St., Benicia, 8002030

FLORIDA

Jefferson County

Dennis-Coxetter House, Jct. of SR 158 and 59, Lloyd, 88002025

GEORGIA

Clarke County

Athens Warehouse Historic District, Roughly bounded by Hancock and Thomas Sts., and the RR tracks, Athens, 88002021

Fulton County

Fairburn Commercial Historic District, Rougly along W. Broad St., and RR tracks between Smith and Dood Sts., Fairburn, 88002015

Muscogee County

Columbus Historic District (Boundry Increase) Bounded by Ninth and Fourth Sts., Chattahoochee River and Fourth Ave., Columbus, 88002048

KENTUCKY

Lawrence County

Atkins—Carter House (wouisa MRA), 314 E. Madison St., Louisa, 8002044

Big Sandy Milling Company (Louisa MRA), Pike St. between Lock Ave. and RR tracks, Louisa, 88002045

Captain Freese House (Louisa MRA), Sycamore St. facing Big Sandy River, Louisa, 88002042

Louisa Commercial Historic District (Louisa MRA), E. Main and Main Cross Sts., Louisa, 88002041

Louisa Residential Historic District (Louisa MRA), Roughly bounded by Perry, Lock, Madison and S. Lady Washington Sts., Louisa, 88002040

Louisa United Methodist Church (Louisa MRA), Main Cross and Madison Sts., Louisa, 88002043

Nelson County

Samuels, T. W., Distillery History District, Jct. of KY 523 and Corman RR tracks, Deatsville, 88002047

LOUISIANA

De Soto Parish

Keachi Baptist Church, LA 172, Keachi, 88002039

Keachi Store, Jct. of LA 5 and 789, Keachi, 88002036

Lincoln Parish

Lewis House, 210 E. Alabama Ave., Ruston, 88002035

MISSISSIPPI

Lincoln County

Inez Hotel, 104 E. Monticello St., Brookhaven, 88002038

Warren County

Planters Hall (Boundary Increase), 822 Main St., Vicksburg, 88002068

Wilkinson County

Holly Grove, MS 33, 4 mi. S of MS 24, Centreville vicinity, 88002037

MISSOURI

Clark County

Montgomery Opera House, 201–209 W. Commercial St., Kahoka, 88002018

NEW JERSEY

Somerset County

Kirch—Ford House, 1 Reinman Rd., Warrenville vicinity, 88002033

Union County

Stoneleigh Park Historic District, Roughly bounded by Westfield Ave., Shackamaxon Dr., Rahway and Dorian Rd., Westfield, 88002020

NORTH CAROLINA

Guilford County

Agricultural and Technical College of North Carolina Historic District, E. side of Dudley St. between Bluford St. and Headen Dr., Greensboro, 88002046

Palmer Memorial Institute Historic District Along US 70 W of jct. with NC 3056, Sedalia, 88002029

Halifax County

Bell—Sherrod House, 207 SE Railroad St., Enfield, 88002027

Orange County

Rigsbee's Rock House, Jct. of Lawrence Rd. and US 70W Bypass, Hillsborough vicinity, 88002026

Rowan County

Wiley, Calvin H., School, 200 blk. of Ridge Ave., Salisbury, 88002028

OREGON

Lincoln County

Cape Perpetua Shelter and Parapet, 3 mi. S of Yachats, Yachats vicinity, 88002016

US Spruce Production Railroad XII, Spur 5 (Blodgett Tract MPS), E of Yachats, Yachats vicinity, 88002032

TEXAS

Bandera County

Lobo Valley Petroglyp Site, Address Restricted, Lobo vicinity, 88002012

VERMONT

Franklin County

Warner Home, 133 High St., St. Albans, 88002034

WISCONSIN

Kenosha County

Third Avenue Historic District, Along Third Ave. between 61st and 66th Sts., Kenosha, 88002022

La Crosse County

Vincent, James, House, 1024 Cass St., La Crosse, 88002024

Waushara County

Kimball, Alanson M., House, 204 Middleton St., Pine River, 88002023

[FR Doc. 88–22788 Filed 10–3–88; 8:45 am]

BILLING CODE 4310–70–M

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PST) on Thursday, November 10, 1988, at Building 201, Fort Mason, San Francisco, California.

The Advisory Coimmission was established by Pub. L. 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda item will be a presentation of a Staff Report by the staff of the Golden Gate National Recreation Area on the plans for development of the Presidio Bayfront/Crissy Field area in San Francisco. Recommendations for the Crissy Field area were derived from four alternatives under consideration for this San Francisco beachfront site. Each alternative would implement the approved General Management Plan for the Golden Gate National Recreation Area, which recommended restored dunes, natural landscaping, lawn, parking, and visitor amenities, such as restrooms and picnic facilities. The amount and location of parking and the balance between the urban and natural landscapes varies under each alternative. Twenty acres of open space will be created by removal of paving and nonhistoric structures. New and restored landscapes would include dunes, grassland, lawn and a seasonal wetland reminiscent of Crissy Field's past as a saltwater marsh. One alternative considers a saltwater lagoon.

The formal presentation of the Crissy Field Bayfront plans were presented at the Golden Gate National Recreation Area Advisory Commission meeting on March 10, 1988. A presentation of broad development plans was made before the GGNRA Advisory Commission on November 10, 1987. Plans for the Golden Gate National Recreation Area portions of Presidio Bayfront/Crissy Field were developed with the assistance of John Northmore Roberts, Landscape Architects and Land Planners, of Berkeley, California, under the auspices of the Golden Gate National Park Association.

Plans for those Presidio Bayfront/Crissy Field lands under U.S. Army management were developed by the Directorate of Engineering and Housing at the Presidio of San Francisco. The San Francisco City Planning Commission staff has also participated in the formulation of this plan. The four alternatives were presented to the public at a joint meeting of the Golden Gate National Recreation Area Advisory Commission and San Francisco City Planning Commission on July 7, 1988.

The meeting is open to the public. Persons wishing to receive the Environmental Assessment for the Crissy Field plans or the Staff Report should contact the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or telephone (415) 556–4484.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after November 25, 1988. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: September 16, 1988.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 88–22786 Filed 10–3–88; 8:45 am]

BILLING CODE 4310–07–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Paul D. French, M.D.; Denial of Application

On July 25, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order

to Show Cause to Paul D. French, M.D., of 3227 Prince Drive, Lake Worth, Florida 33461, proposing to deny his application, executed on November 10, 1986, for registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the Order to Show Cause was Dr. French's lack of authorization to handle controlled substances in the State of Florida.

A registered mail receipt indicates that the Order to Show Cause was received by Dr. French on August 4, 1988. More than thirty days have passed since the Order to Show Cause was received by Dr. French and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. French has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e) enters this final order based on the investigative file.

The Administrator finds that on April 20, 1987, the State of Florida, Department of Professional Regulation, ordered the emergency suspension of Dr. French's license to practice medicine. This action was based on violations of Florida Statutes. First, the Department found that Dr. French violated § 458.331(1)(b) by having his medical license acted against by the licensing authority of another state. Dr. French's license to practice medicine was revoked in the State of Alabama on October 11, 1985, due to his excessive personal use of drugs and alcohol.

The Department of Professional Regulation also found that Dr. French violated § 458.331(1)(s), by being "unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics * * * or as a result of any mental or physical condition." Finally, the Department found that Dr. French's continued retention of a license to practice medicine in the State of Florida constituted an immediate and serious danger to the public health, safety and welfare.

As a result of the suspension of Dr. French's license to practice medicine, he is not currently authorized to handle controlled substances in the State of Florida. The Administrator and his predecessors have consistently held that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. 21 U.S.C. 823(f). See, *Edward L. McIver, M.D.*, 53 FR 16477 (1988); *Howard J. Rueben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86–54, 51 FR 41168 (1986); and cases cited therein.

The Administrator concludes that due to Dr. French's lack of authority under state law to handle controlled substances in Florida, the state in which he wishes to become registered, DEA cannot register Dr. French in Florida. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for registration submitted by Paul D. French, M.D., on November 10, 1986, be, and it hereby is, denied. This order is effective October 4, 1988.

Dated: September 28, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88–22795 Filed 10–3–88; 8:45 am]

BILLING CODE 4410–09–M

Ronald H. Futch, M.D.; Denial of Application for Registration

On July 8, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Ronald H. Futch, M.D., of 1021 26th Street, Oakland, California 94607, an Order to Show Cause proposing to deny his application executed on September 21, 1987, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Futch's registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4). In addition, the Order to Show Cause alleged that Dr. Futch materially falsified his application for registration, thereby providing a second statutory basis for the denial of his application, pursuant to 21 U.S.C. 824(a)(1).

Dr. Futch received the Order to Show Cause on July 15, 1988. More than thirty days have passed since he received the Order to Show Cause. Dr. Futch has not responded. Thus, the Administrator concludes that Dr. Futch has waived his opportunity for a hearing on the issues raised in the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order without a hearing and based upon information contained in the investigative file. 21 CFR 1301.57.

The Administrator finds that Dr. Futch previously possessed DEA Certificate of Registration AF8559722. That registration became delinquent and expired on September 30, 1981. Dr. Futch has not possessed a valid DEA Certificate of Registration since that date.

On February 6, 1984, in the California Municipal Court of the Los Angeles Judicial District, Dr. Futch pleaded guilty to three misdemeanor counts of violating Section 141.07 of the California Welfare and Institutions Code by submitting false claims for payment under the Medi-Cal Program. He was placed on summary probation for 24 months on condition that he pay restitution to the California Health Care Fund in the amount of $11,563.50 and pay costs of investigation to the California Department of Justice.

Based on the 1984 criminal convictions, Dr. Futch was administratively disciplined by the California State Board of Medical Quality Assurance (BMQA). On July 1, 1987, BMQA placed Dr. Futch on probation for a period of five years. In addition, his medical license was suspended for three months, June 1 through August 31, 1987. Dr. Futch also was advised by his probation officer that during the three month suspension he was prohibited from practicing medicine in any manner, consulting on any patient care, prescribing any medications, renewing any prescriptions, or receiving payment for any professional medical services.

A BMQA investigator retrieved three prescriptions written by Dr. Futch from local pharmacies. The prescriptions, for Valium 10 mg. and Vicodin, both controlled substances, were written during the suspension period and in the name of a woman who previously was Dr. Futch's patient. Dr. Futch treated this patient and prescribed controlled substances for her during the period in which he was neither registered by DEA nor licensed by the State of California to handle controlled substances or practice medicine.

Based upon information that Dr. Futch issued controlled substance prescriptions while his medical license was suspended, on October 15, 1987, in the Alameda County California Municipal Court for the Oakland-Piedmont-Emeryville Judicial District, Dr. Futch was indicated on two felony counts of unlawfully prescribing controlled substances in violation of Section 11155 of the California Health and Safety Code. As of this date, there has been no final disposition in the pending criminal case. Although Dr. Futch has yet to be convicted, the Administrator finds sufficient evidence to conclude that he prescribed controlled substances at a time he lacked state and Federal authority to do so, disregarding both oral and written warnings against such activities.

The Administrator also finds that on May 19, 1986, Dr. Futch was found to be in unlawful possession of cocaine for other than legitimate medical purposes. The investigative file reveals that while on a routine patrol of a hotel parking lot, two officers from the Los Angeles County Sheriff's Department observed an individual, later determined to be Dr. Futch, peering into the windows of several parked cars. When summoned by one of the officers, Dr. Futch walked back to his own car instead of approaching the police officers. The officers then observed him throw a clear seal package, later found to contain white rock crystalline cocaine (now commonly known as "crack" or "rock" cocaine), onto the front seat of the car. Dr. Futch was subsequently arrested and, on August 22, 1986, he was placed on pretrial diversion by the Municipal Court of the Culver Judicial District, Los Angeles County.

The Administrator also finds that Dr. Futch knowingly and intentionally furnished false information in his application for registration executed on September 21, 1987. At that time, Dr. Futch indicated that he possessed a current California medical license authorizing him to handle controlled substances. In fact Dr. Futch's license was delinquent at the time he submitted his DEA application for registration. Dr. Futch also indicated that his medical license had never been suspended, when in fact, his California medical license was suspended on June 1, 1987, for a period of three months. Since DEA must rely on the truthfulness of information supplied by applicants in registering to handle controlled substances, falsification cannot be tolerated. Any material falsification of an application for registration is an independent statutory basis for the denial of an application. See 21 U.S.C. 824(a)(1).

In view of all of the foregoing, Dr. Futch's conviction for submitting false Medi-Cal claims, his practicing medicine and prescribing controlled substances during the suspension of his medical license, his falsification of his application for DEA registration and his unlawful possession of cocaine for other than legitimate medical purposes, the Administrator concludes that the issuance of a registration to Dr. Futch would be inconsistent with the public interest. Dr. Futch cannot be entrusted to handle controlled substances in a lawful and responsible manner. His application for registration must be denied.

Having concluded that there are lawful bases for the denial of Dr. Futch's application, and having concluded that his pending application for registration must be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders that the application for registration, executed by Ronald H. Futch, M.D., on September 21, 1987, be, and it hereby is, denied.

This order is effective October 4, 1988.

John C. Lawn,

Administrator.

Dated: September 28, 1988.

[FR Doc. 88–22796 Filed 10–3–88; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before November 16, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Air Force (N1–AFU–88–43). Facilitative publications.
2. Department of the Air Force (N1–AFU–88–46). Visual Information property and equipment records.
3. Department of the Air Force (N1–AFU–88–47). Records relating to photographic activities and photographs of local commanders and other local personnel.
4. Department of the Air Force (N1–AFU–88–48). Daily unit strength reports.
5. Department of the Air Force (N1–AFU–88–50). Food service pricing records.
6. Department of the Air Force (N1–AFU–88–51). Financial claim logs.
7. Department of the Air Force (N1–AFU–88–52). Facilitative records relating to the production of motion pictures and video recordings.

8. Department of the Army (N1–AU–88–9). Professional Responsibility and Management Inquiries case files.

9. Defense Logistics Agency, Resources Management Division (N1–361–88–3). Safety Program files.

10. Department of Agriculture, Forest Service, International Forestry (N1–95–87–9). General correspondence, mailing lists, and reference files.

11. Department of Agriculture, Forest Service, Engineering Division (N1–95–87–13). General correspondence relating to solid waste systems.

12. Department of Agriculture, Forest Service, Property and Procurement Staff (N1–95–87–15). Background records relating to interagency agreements.

13. Department of Agriculture, Agricultural Stabilization Ground Conservation Service (N1–145–88–1). General correspondence and contract case files.

14. Environmental Protection Administration, Office of Pesticide Programs (N1–412–88–2). Compact Label File consisting of microform copies of pesticide product labels.

15. General Services Administration, Office of Administrative Services (NC1–269–85–1). Accounting and financial management files.

16. Department of Justice, Criminal Division (N1–60–88–7). Reference files of the Assistant Attorney General.

17. Department of Justice, Civil Division (N1–60–88–9). Reference files of the Assistant Attorney General, Deputy Assistant Attorney General, and Special Assistants.

18. Department of Labor, Bureau of Labor Statistics (N1–257–88–3). Technical Aid Participant Personnel Files.

19. National Archives and Records Administration, Office of the National Archives, Civil Archives Division (N2–313–88–1). Accessioned records of the Department of Navy, U.S. Naval Support Force, Antarctica (USNSFA). Routine communications files, messages, and logs of McMurdo Communications Center and Task Force 43, 1956–60.

20. National Archives and Records Administration, Office of the National Archives, Military Archives Division (N2–338–88–1). Records of U.S. Army Commands, 1942–52, pertaining to housekeeping matters, including invoices, cargo manifests, time and attendance records, vouchers, and similar documents.

21. Panama Canal Commission, Administrative Services Division (N1–185–88–7). Non-employee medical files.

22. Department of the Treasury, Bureau of Public Debt (N1–53–87–3). Files dealing with the redemption of government securities.

23. Department of the Treasury, United States Secret Service, Protective Intelligence Division (N1–87–88–2). Trip files.

24. United States Information Agency, Office of Public Liaison (N1–306–87–5). Routine and facilitative records Policy material is scheduled for transfer to the National Archives.

25. United States Information Agency, Bureau of Programs, Office of the Associate Director and Deputy Associate Director (N1–306–88–3). Routine administrative and housekeeping records. (Program records from this office are permanent).

26. United States Information Agency, Bureau of Programs, Executive Office (N1–306–88–4). Routine administrative and housekeeping records from the Bureau's support office.

27. United States Information Agency, Bureau of Programs, Office of Program Coordination and Development (N1–306–88–5). Routine administrative and housekeeping records (Program records from this office are permanent).

28. United States Information Agency, Bureau of Programs (N1–306–88–8). Routine records of USIA foreign press centers.

29. United States Information Agency, Bureau of Programs (N1–306–88–9). Routine records of USIA media reaction staff.

Dated: September 28, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88–22748 Filed 10–3–88; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552 of Title 5, United States Code.

1. *Date:* October 20–21, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1989.

2. *Date:* October 24, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review Translations applications in West European Studies, submitted to the Division of Research Programs, for projects beginning after April 1, 1989.

3. *Date:* October 24–25, 1988.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: To review applications submitted to Humanities Projects in Libraries Program, submitted to the Division of General Programs, for projects beginning after September 1, 1989.

4. *Date:* October 27–28, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: To review applications submitted to Humanities Projects in Libraries Program, submitted to the Division of General Programs, for projects beginning after September 1, 1989.

5. *Date:* October 27–28, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the

Division of General Programs, for projects beginning after April 1, 1989.

6. *Date:* October 28, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: M–14.
Program: This meeting will review Translation applications in Central and East European, submitted to the Division of Research Programs, for projects beginning after April 1, 1989.

7. *Date:* October 31, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Translation applications in Religion and Near East, submitted to the Division of Research Programs, for projects beginning after April 1, 1989.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 88–22771 Filed 10–3–88; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming. (202) 357–9520.

OMB Desk Officer: ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey of Doctorate Recipients.

Affected Public: Individuals.

Responses/Burden Hours: 52,700 respondents—5,970 burden hours.

Abstract: This survey will collect demographic and employment data on PH.D scientists, engineers, and humanists. This information will be used in policy and planning activities by government agencies, educational institutions, and private industry.

Dated: September 29, 1988.

Herman G. Fleming,
NSF Clearance Officer.

[FR Doc. 88–22792 Filed 10–3–88; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Co., Pilgrim Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to the Boston Edison Company (the licensee) for the, Pilgrim Nuclear Power Station located at the licensee's site in Plymouth County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, Septemer 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the license shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurale impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to

prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room, Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland, this 27th day of September 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects, I/II.

[FR Doc. 88-22801 Filed 10-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Co., Maine Yankee Atomic Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Maine Yankee Atomic Power Company (the licensee) for the, Maine Yankee Atomic Power Station located at the licensee's site in Lincoln, County, Maine.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the Fedeal Register a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of §50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 27th day of September, 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects, I/II.

[FR Doc. 88-22802 Filed 10-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co., Monticello Nuclear Generating Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Northern States Power Company (the licensee) for the Monticello Nuclear Generating Plant, located in Wright County, Minnesota.

Environmental Assessment

Identification of Proposed Action

The licensee requested an exemption from Paragraph III.A.3 of 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." In 1973, Appendix J was issued to establish requirements for primary containment leakage testing and incorporated, by reference, ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This standard requires that containment leakage calculations be performed by using either the Point-to-Point method or the Total Time method. The Total Time method was used the most by the nuclear industry until about 1976.

At this time, licensees who wish to use the Mass-Point method of calculating containment integrated leakage must submit an application for exemption from the Appendix J requirement that containment integrated leak rate tests will conform to ANSI N45.4. The exemption proposed by the licensee would be granted until pending changes to Appendix J are promulgated. In the Mass-Point method, the mass of air in containment is calculated and plotted as a function of time, and leakage is calculated from the slope of the linear least squares.

With the present developments in technology, the Mass-Point method has gained increasing recognition.

The superiority of the Mass-Point method becomes apparent when it is compared with the two other methods. In the Total Time method, a series of leakage rates are calculated on the basis of air mass differences between an initial data point and each individual data point thereafter. If for any reason (such as instrument error, lack of temperature equilibrium, ingassing or outgassing) the initial data point is not accurate, the results of the test will be affected. In the Point-to-Point method, the leak rates are based on the mass difference between each pair of consecutive points which are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as percentage of the containment air mass. It follows from the above that the Point-to-Point method ignores any mass readings during the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours apart.

The licensee's request and bases for exemption are contained in a letter dated August 1, 1988, as supplemented by letter dated August 23, 1988. The exemption would permit the licensee to use the Mass-Point method for calculating containment leakage rates as an acceptable alternative to the Point-to-Point and Total Time methods currently specified in Appendix J.

The Need for the Proposed Action

The proposed exemption is needed to allow use of the Mass-Point analysis method at Monticello Nuclear Generating Plant and for improved analysis of the test results.

Environmental Impacts of the Proposed Action

The erraticism of the Total Time method creates a higher probability of unnecessarily failing a containment integrated leakage rate test (note that the calculational procedure is independent of containment tightness) possibly resulting in increased test frequency, critical path outage time, and exposure to test personnel.

Radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or have any other environmental impact. Therefore, the Commission concludes that there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

The Commission has concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation, which have been previously considered by the Commission in the Final Environmental Statement dated November 1972.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the request for the exemption dated August 1, 1988, as supplemented by letter dated August 23, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 23rd day of September 1988.

For the Nuclear Regulatory Commission.

Dominic C. DiIanni,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88–22803 Filed 10–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–443]

Public Service Company of New Hampshire, Seabrook Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Public Service of New Hampshire (the licensee) for the Seabook Station, Unit 1, located at the licensee's site in Rockingham County, New Hampshire.

Environental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licenses. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to

be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completing of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $620 million property insurance per an Exemption issued on May 11, 1988 (53 FR 19361, May 27, 1988). Further, as stated in that exemption, the $620 million property insurance requirements will be increased to $1.06 billion if the Seabrook facility receives an operating license which allow the reactor to go critical or operate at any power level. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Local Public Document Room, Founders Park, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 28th of September 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects, I/II.

[FR Doc. 88-22804 Filed 10-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas & Electric Corp., R. E. Ginna Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Rochester Gas & Electric Corporation (the licensee) for the R. E. Ginna Nuclear Power Plant located at the licensee's site in Wayne County, New York.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the

exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small proability of a serious accident occuring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has not other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or person in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW, Washington, DC, and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, Maryland, this 27th day of September, 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I–3, Division of Reactor Projects, I/II.

[FR Doc. 88–22805 Filed 10–3–88; 8: 45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corp., Vermont Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Vermont Yankee Nuclear Power Corporation (the licensee) for the Vermont Yankee Nuclear Power Station located at the licensee's site in Windham County, Vermont.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trusteee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident

occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC woud be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; and alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC , and at the Local Public Document Room, Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Dated at Rockville, Maryland, this 27th day of September , 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I–3, Division of Reactor Projects, I/II.

[FR Doc. 88–22806 Filed 10–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Power Co., Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Maine Yankee Atomic Power Company (the licensee) for the, Yankee Atomic Power Company located at the licensee's site in Franklin County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 35338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternative to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Greenfield Community College, One College Drive, Greenfield Massachusetts 01301.

Dated at Rockville, Maryland, this 27th day of September, 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects, I/II.

[FR Doc. 88-22807 Filed 10-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320-OLA (Disposal of Accident-Generated Water); ASLBP No. 87-554-04-OLA)]

General Public Utilities Nuclear Corp., et al.; (Three Mile Island Nuclear Station, Unit 2); Schedule of Hearings

September 27, 1988.

Before Administrative Judges: Peter B. Bloch, Chair; Glenn O. Bright, Dr. Oscar H. Paris.

The public hearing required by our Order of August 25, 1988, will take place as follows:

Dates: October 31, November 1-4, 8.
Place: Lancaster County Courthouse, 50 North Duke Street, Courtroom A, Lancaster, Pennsylvania 17603.
Dates: November 7, 9 & 10, 1988.
Place: Lancaster County Courthouse, 50 North Duke Street, 6th Floor Hearing Room, Lancaster, Pennsylvania 17603.
Dates: November 14-15, 1988.
Place: 4350 East West Highway, Room 550, Bethesda, Maryland.
Times: Monday, October 31 and Monday, November 7: 1 pm to 5 pm; otherwise: 9 am to 5 p.m. Times subject to modificatioin by order of the Board. Parties should be prepared for extended hours, if necessary.

Written limited appearance statements may be filed with the Board prior to October 28, 1988. After review of the written statements, the Board will decide whether to schedule oral limited appearance statements.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chair, Administrative Judge.

[FR Doc. 88-22798 Filed 10-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co., Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2; Exemption

I

The Northern States Power Company (NSP, the licensee) is the holder of Facility Operating Licenses Nos. DPR-42 and DPR-60, which authorize operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2 (Prairie Island) at a steady-state power level not in excess of 1633 megawatts thermal for each unit. The facilities are pressurized water reactors located at the licensee's site in Goodhue County, Minnesota. The licenses provide, among other things, that Prairie Island is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

The Code of Federal Regulations, 10 CFR 50.54(o), specifies that primary reactor containments for water-cooled power reactors shall comply with Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." Paragraph III.A.3 of Appendix J incorporates by reference the American National Standard ANSI N45.4-1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This standard requires that containment leakage rate calculations for containment integrated leakage rate tests (CILRTS) be performed using either the Point-to-Point method or Total Time method.

Further advances in leakage rate testing technology have provided improved test methods, including a newer method of evaluating test data called the Mass Point method. This Mass Point method was incorporated in a newer standard, ANSI/ANS-56.8-1981, "Containment System Leakage Testing Requirements" (revised 1987) and in fact has been accepted by the Commission's staff as an improved alternative method of calculating containment leakage rates. However, a strict interpretation of the specific wording of Appendix J, III.A.3, by referencing only the older ANSI standard, precludes use of the newer improved method, unless the licensees who wish to use this method receive an exemption from the Appendix J requirement of conforming to this provision of ANSI N45.4-1972.

III

By letter dated August 1, 1988, as supplemented by letter dated August 23, 1988, the licensee requested an exemption from 10 CFR Part 50, Appendix J, Paragraph III.A.3, which requires that all CILRTs be performed in accordance with ANSI N45.4-1972. ANSI N45.4-1972 requires that leakage rate calculations be performed using either the Total Time method or the Point-to-Point method.

The licensee indicated that since the issuance of ANSI N45.4-1972, a more accurate method of determining containment leakage rates, the Mass Point method, has been developed as descibed in ANSI/ANS-56.8. Therefore, the licensee has requested an exemption to allow the use of the Mass Point method for calculating containment leakage rates.

It has been recognized by the professional community that the Mass Point method is superior to the Point-to-Point and Total Time methods which are reference in ANSI N45.4-1972 and endorsed by the present regulations. The Mass Point method calculates the air mass at a series of points in time, and plots it against time. A linear regression line is plotted through the mass-time points using a least square fit. The slope of this line is divided by the intercept of this time, and the result is multiplied by an appropriate constant to obtain the calculated leakage rate.

The superiority of the Mass Point method becomes apparent when it is compared with the two other methods. In the Total Time method, a series of leakage rates are calculated on the basis of containment air mass differences between an initial data point and each individual data point thereafter, and an average of these leakage rates is then determined. If for any reason (e.g., instrument error, lack of temperature equilibrium, ingassing, or outgassing) the initial data point is not accurate, the results of the test will be affected. In the Point-to-Point method, the leak rates are based on the mass difference between each pair of consecutive data points, and these leakage rates are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as a percentage of the containment air mass. It follows from the above that the Point-to-Point method ignores any mass readings taken during

the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours apart.

On February 29, 1988 (53 FR 5985), the Commission published a proposed amendment to Appendix J to explicitly permit the use of the Mass Point method, subject to certain conditions that have been accepted by the Commission's staff since approximately 1976, as well as to permit the use of the prior methods referenced in ANSI N45.4–1972.

In addition to the method of calculation, consideration of the length of the test should also be included in the overall program. In accordance with Section 7.6 of ANSI N45.4–1972, a test duration of less than 24 hours is only allowed if approved by the Commission, and the only currently approved methodology for such a test is contained in Bechtel Topical Report BN–TOP–1, Revision 1, "Testing Criteria for Integrated Leakag Rate Testing of Primary Containment Structures for Nuclear Power Plants," dated November 1, 1972. This approach only allows use of the Total Time method. Therefore, the Commission conditions the exemption to require a minimum test duration of 24 hours when the Mass Point method is used. By letter dated August 23, 1988, the licensee confirmed that a minimum test duration of 24 hours will be utilized when the Mass Point method is used.

In the August 1, 1988 letter, the licensee also submitted information to identify the special circumstances for granting this exemption for Prairie Island pursuant to 10 CFR 50.12. The purpose of Appendix J to 10 CFR Part 50 is to assure that containment leak-tight integrity can be verified periodically throughout the service lifetime in order to maintain containment leakage rate within the limit specified in the facility Technical Specifications. The underlying purpose of the rule, in specifying particular methods for calculating leakage rates, is to assure that accurate and conservative methods are used to assess the results of containment leakage rate tests. The Commission's staff has determined that the Mass Point method is an acceptable method for calculating containment leakage rates and satisfies the purpose of the rule.

Based on the above discussion, the licensee's proposed exemption from paragraph III.A.3 of Appendix J to allow use of the Mass Point method as requested in the submittal dated August 1, 1988, as revised by letter dated August 23, 1988, is acceptable, until such provision of Appendix J is modified. Thereafter, the licensee shall comply with the provisions of such rule. The exemption applies only to the method of calculating leakage rates (by use of the Mass Point method) and not to any other aspects of the tests.

IV

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a)(1), that this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission hereby grants an exemption as described in Section III above from Paragraph III.A.3 of Appendix J to the extent that the Mass Point method may be used for containment leakage rate calculations, providing it is used with a minimum test duration of 24 hours. The exemption is granted until such provision of Appendix J is modified. Thereafter, the licensee shall comply with the provisions of such rule. The exemption applies only to the method of calculating leakage rate (using the Mass Point method) and not to any other aspects of the tests.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will not have a significant effect on the quality of the human environment (September 27, 1988, 43 FR 37660).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of September 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects III, IV, V and Special Projects, Office of the Nuclear Reactor Regulation.

[FR Doc. 88–22799 Filed 10–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–150; Facility Operating Licensing No.R–75; Amendment No. 12]

Ohio State University Engineering Experiment Station, Columbus, Ohio 43210; Order Modifying License

I

Ohio State University (licensee or OSU) is the holder of Facility Operating License No. R–75 (License) issued on October 24, 1961, by the U.S. Nuclear Regulatory Commission (Commission). The license authorizes operation of the OSU Training and Research Reactor (facility) at a power level of up to 10 kilowatts (thermal). The facility is located in Columbus, Ohio, on property owned by the OSU, approximately two miles west of the main campus. The mailing address is Ohio State University, Engineering Experiment Station, 142 Hitchcock Hall, Columbus, Ohio 43210.

II

On February 25, 1986, the Commission promulgated a final rule in 10 CFR 50.64 of its regulations limiting the use of high-enriched uranium (HEU) fuel in domestic research and test reactors (non-power reactors) (*see* 51 FR 6514). The rule, which became effective on March 27, 1986 requires that a licensee of an existing non-power reactor replace HEU fuel at its facility with low-enriched uranium (LEU) fuel acceptable to the Commission: (1) Unless the Commission has determined that the reactor has a unique purpose and (2) contingent upon Federal Government funding for conversion-related costs. The rule is intended to promote the common defense and security by reducing the risk of theft and diversion of HEU fuel in non-power reactors and the adverse consequences to public health and safety and the environment from such theft diversion.

10 CFR 50.64(b)(2)(i) and (ii) require that a license of a non-power reactor: (1) Not initiate acquisition of additional HEU fuel, if LEU fuel acceptable to the Commission for that reactor is available when it proposes that acquisition, and (2) replace all HEU fuel in its possession with available LEU fuel acceptable to the Commission for that reactor, in accordance with a schedule determined pursuant to 10 CFR 50.64(c)(2).

10 CFR 50.64(c)(2)(i) of the rule, among other things, requires each licensee of a non-power reactor, authorized to possess and to use HEU fuel, to develop and to submit to the Director of the Office of Nuclear Reactor Regulation (Director) by March 27, 1987, and at 12-month intervals thereafter, a written proposal (proposal) for meeting the rule's requirements.

10 CFR 50.64(c)(2)(i) also require the licensee to include in its proposal: (1) A certification that the Federal Government funding for conversion is available through the Department of Energy (DOE) or other appropriate Federal agency, and (2) a schedule for conversion, based upon availability of fuel acceptable to the Commission for that reactor and upon consideration of other factors such as the availability of shipping casks, implementation of

arrangements for the available financial support, and reactors usage.

10 CFR 50.64(c)(2)(iii) requires the licensee to include in its proposal, to the extent required to effect conversion, all necessary changes to the license, to the facility, and to the licensee's procedures (all three types of changes hereafter called modifications). This paragraph also requires the licensee to provide supporting safety analyses so as to meet the schedule established for conversion.

10 CFR 50.64(c)(2)(iii) also requires the Director to review the licensee's proposal, to confirm the status of Federal Government funding, and to determine a final schedule, if the licensee has submitted a schedule for conversion.

10 CFR 50.64(c)(3) requires the Director to review the licensee's supporting safety analyses and to issue an appropriate enforcement order directing both the conversion and, to the extent consistent with protecting the public health and safety, any necessary modifications. The Commission explained in the statement of considerations of the final rule that in most cases, if not all, the enforcement order would be in the form of an order to modify the license under 10 CFR 2.204 (*see* 51 FR 6514).

10 CFR 2.204 provides, among other things, that the Commission may modify a license by issuing an amemdment on notice to the licensee that it may demand a hearing with respect to any part or all of the amendment within 20 days from the date of the notice or such longer period as the notice may provide. The amendment will become effective on the expiration of this 20-day-or-longer period. If the licensee requests a hearing during this period, the amendment will become effective on the date specified in an order made after the hearing.

10 CFR 2.714 sets out the requirements for a person whose interest may be affected by any proceeding to initiate a hearing or to participate as a party.

III

On October 7, 1987, the Director received the licensee's proposal, including its proposed modifications, supporting safety analyses and schedule for conversion. The conversion consists of replacement of high-enriched with low-enriched uranium fuel elements. The fuel elements contain MTR-type fuel plates with the fuel meat in the form of uranium silicides dispersed in an aluminum matrix. The enrichment is less than 20% in the U–235 isotope. The Licensing Conditions and Technical Specification changes needed to amend the facility license are included in the attachment to this Order. On the basis of the licensee's submitttals and the requirements of 10 CFR 50.64, I have made a determination that the public health and safety and the common defense and security require the licensee to convert from the use of HEU to LEU fuel pursuant to the modifications set forth in the attachment in accordance with the schedule set out below.

IV

Accordingly, pursuant to sections 51, 53, 57, 101, 104, 161b., 161., and 161o. of the Atomic Energy Act of 1954, as amended, and to the Commission's regulations in 10 CFR 2.204 and 50.64, it is hereby ordered that:

On the later date of either receipt of low-enriched uranium fuel elements by the licensee, or 30 days following the date of publication of this Order in the **Federal Register**, Facility Operating License No. R–75 is modified by amending the License Conditions and Technical Specifications as stated in the Attachment to this Order.

V

Pursuant to the Atomic Energy Act of 1954, as amended, the licensee or any other person adversely affected by this Order may request a hearing within 30 days of the date of this Order. Any request for a hearing shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement at the same address. If a person other than the licensee requests a hearing, that person shall set forth with particularity in accordance with 10 CFR 2.714 the manner in which the person's interest is adversely affected by this Oreder.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing is whether this Order should be sustained.

This Order shall become effective on the later date of either receipt of low-enriched uranium fuel elements by the licensee or 30 days following the date of publication of this Order in the **Federal Register** or, if a hearing is requested, on the date specified in an order following further proceedings on this Order.

Dated at Rockville, Maryland, this 27 day of September 1988.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 88–22800 Filed 10–3–88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care and Treatment Furnished by the United States; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by section 2(a) of the Act of September 25, 1962 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget by Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the following three sets of rates are established for use in connection with the recovery, as authorized by such Act, from tortiously liable third persons of the cost of hospital and medical care and treatment furnished by the United States (Part 43 of Chapter I of Title 28 of the Code of Federal Regulations) through three separate Federal agencies. These rates have been established in accordance with the requirements of OMB Circular A–25, requiring reimbursement of the full cost of all services provided. This has been determined as follows:

(a) For the Department of Defense—historical costs and workload data developed through the Medical Expense and Performance Reporting System (MEPR) provide an operating cost base to which are added systemwide costs and allowances for actual inflation and pay raises to obtain the estimates for the fiscal year under review. The costs added are those items required by OMB Circular A–25: (1) retirement for civilian personnel; and (2) an asset charge in lieu of a specific depreciation cost of fixed assets.

(b) For the Veterans Administration—the actual costs and per diem rates by type of care for the previous year are added to the estimated costs for depreciation of buildings and equipment, administrative overhead, interest on capital investment, and Government employee retirement and disability charges. These computed rates are then adjusted by the budgeted percentage change to arrive at the estimated rates for the fiscal year under review.

(c) For the Department of Health and Human Services—the sum of obligations

for each cost center providing medical services is broken down into amounts attributable to inpatient care on the basis of the proportion of staff devoted to each. Total inpatient costs and outpatient costs thus determined are divided by the relevant workload statistic (inpatient day, outpatient visit) to produce the inpatient and outpatient rates. In calculating the rates, the Department's unfunded retirement liability costs, and capital and equipment depreciation costs were incorporated to conform to requirements contained in OMB Circular A–25. In addition, cost centers' obligations include all costs from all accounts—such as Medicare and Medicaid collections, and Contract Health funds used to support direct operations. Inclusion of these funds yields a more accurate indication of the cost of care in HHS facilities.

These rates represent the reasonable cost of hospital, nursing home, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished:

(a) For such care and treatment furnished by the United States in Federal hospitals, nursing homes, and outpatient clinics, administered by any of the three Federal agencies—Department of Defense, Veterans Administration or Department of Health and Human Services.

(b) For such care and treatment furnished at Government expense in a facility not operated by the United States, the rates shall be amounts expended by the United States for such care and treatment.

	Effective October 1, 1988		
	DOD	VA	HHS
Hospital care per inpatient day:			
General medical care	494	483	708
Surgical care	.....	681	.....
Psychiatric care	.....	232	.....
Intermediate care	.....	209	.....
Neurology	.....	426	.....
Rehabilitation medicine	.....	374	.....
Blind rehabilitation	.....	545	.....
Alcohol and drug treatment	.....	213	.....
Nursing home care	.....	539	.....
Burn Center, U.S. Army Institute of Surgical Research, Brooke Army Medical Center, Fort Sam Houston, Texas	2,020	.....	.....
Outpatient medical and dental treatment:			
Outpatient visit	67	110	95
Dental outpatient visit	.....	70	.....

For the period beginning October 1, 1988, the rates prescribed herein supersede those established by the Director of the Office of Management and Budget on September 24, 1987 (52 FR 36351).

Dated: September 27, 1988.

James C. Miller III,

Director, Office of Management and Budget.

[FR Doc. 88–22840 Filed 10–3–88; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26119; File No. SR–NASD–88–35]

Self-Regulatory Organizations; Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a Permanent Subscriber Fee for the National Quotation Data Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 29, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Following is the full text of a proposed amendment which adds a new Section A.10 to Part IX of Schedule D of the NASD By-Laws.

(10) National Quotation Data Service ("NQDS")

The charge to be paid for each interrogation or display device receiving information disseminated through the NQDS shall be $50.75 per month.

Additionally, the NASD request that the Commission approve the retroactive application of this charge to all subscribers currently receiving the NQDS from vendors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Derivation of Cost-Based NQDS Service Fee*

The purpose of the proposed rule change is to establish a cost-based charge for NQDS information that is supplied to vendors for distribution to their subscribers.[1] In earlier proceedings on this matter, the Commission determined that an acceptable fee would be one composed solely of the costs incurred by the NASD (or its operating subsidiaries) in collecting, validating, and preparing NQDS information for transmission to a vendor. The Commission expressly rejected inclusion of costs related to the query functions of the NASDAQ System, *i.e.*, the storage of quotations for inquiry purposes and responses to actual inquiries. Similary, the Commission rejected inclusion of costs related to incremental capacity in the NASD's database which is necessary to support an inquiry service but not a quotation collection service.

In order to isolate the specific costs associated with collecting, validating and processing the NQDS data for transmission to a vendor, the NASD staff conducted a comprehensive re-examination of cost allocations (particularly indirect costs) to pools consisting of six resources and eleven services. The budgeted costs for NASDAQ, Inc. and NASD Market Services, Inc. for fiscal 1988 were utilized in deriving the costs to be

[1] NASDQ, Inc. disseminates a variety of market data respecting approximately 5,400 securities that are authorized for inclusion in the NASDAQ system. In this regard, NASDAQ Level 2 service consists of all market makers' bids and offers for all NASDAQ securities. Level 2 service includes a query function that enables subscribers to access a pre-formatted display of market makers' quotes. This service is marketed exclusively by NASDAQ Inc. to subscribers who pay $150/terminal/month plus $.02/quote request. In contrast, a NASDAQ Workstation subscriber pays a service fee of $300/month for receiving a broadcast stream of all market makers' quotes. The subscriber can designate a portion of this information for storage and retrieval in his personal computer ("PC") authorized for NASDAQ Workstation ™ service. Queries are processed by the subscriber's PC rather than the NASDAQ central processor. The NQDA service consists of the same quotation information as Level 2 and NASDAQ Workstation™ service but is provided to vendors in the form of data stream rather than a pre-formatted display of information. Hence, the vendor must arrange the quotation information for retrieval and display by subscribers.

allocated. The major categories of cost and their allocation may be summarized as follows:

Operational costs—allocated to the six resource pools based on identifiable personnel, equipment, and physical facilities dedicated to those operations;

Systems and product/service development costs—allocated to the resource cost pools based on the historical or anticipated level of effort to be devoted to the respective resources;

Overhead and general and administrative ("G&A") costs—allocated directly to resources or sevices to the extent that a causal relationship exists between those resources/services and the incurrence of the affected costs; and

Residual overhead and G&A costs—allocated to resources and services based on a total cost input base.

The preceding steps yielded fully allocated, total cost pools for each of the six resources as well as the application of directly identifiable costs to the affected services. Next, the resource costs were reallocated to system functions that support the eleven services including the NQDS. Lastly, the costs of resource functions integral to the NASD's quotation delivery services (Level 1, Leverl 2/3, and NQDS) were apportioned to the individual services. The total costs allocated to the NQDS were the spread among the budgeted terminal population to yield the charge proposed in this filing. Thus, the costs of all system functions that support the furnishing of NQDS data to vendors are reflected in the proposed subscriber fee. This multi-step approach was designed to identify, as accurately as possible, only those costs associated with the collection, validation, and processing of NQDS data to the point where it can be transmitted to a vendor, and the actual costs of transmitting the NQDS date to vendors. As a result Commission approval of the proposed fee would obviate any vendor access charge.

The NASD believes that the methodology underlying the proposed NQDS fee satisfies the guidelines established by the Commission to meet the "equitable allocation" standard of section 15A(b)(5) of the Act. A more detailed description of that methodology is set forth below.

a. Direct Resource Costs

As noted earlier, the NASD identified six resource pools consisting of computer hardware and telecommunications facilities that perform various functions essential to the provision of data services: (1) Network/communications—2,400-baud lines; (2) Network/communications—9,600-baud lines;[2] (3) UNISYS processor; (4) Tandem processor; (5) UNISYS data storage; and (6) Tandem data storage. Operational costs relating to the respective resource pools were charged directly to them. These charges were determined based on the costs of personnel, equipment (depreciation, rental, and maintenance), floor space, and other direct costs (*e.g.*, leased communications lines, computer supplies, ets.) associated with these resources.

After aggregating the direct costs for each resource pool, those costs were assigned to specific functions performed within each resource. The functional allocation of costs for the 2,400-baud network is based upon the network occupancy of the information relating to each of its functions. Network occupancy for a function is calculated by expressing the product of the function's traffic volume and its average message length as a percentage of the sum of all such products for all functions. Similarly, allocation of processor costs is made on the basis of processor occupancy, calculated by multiplying traffic volume by the central processor unit ("CPU") time required for an individual transaction, and expressing the product as a percentage for each function.[3] Finally, the costs of data storage facilities in each processor complex were allocated to functions on the basis of unweighted traffic volume.[4] NASDAQ and NASDAQ Workstation ™ equipment costs, which compose other cost pools, were not allocated to any function or data service because they are recovered through separate equipment rates previously approved by the Commission. Accordingly, no portion of these equipment costs is reflected in the computation of the proposed NQDS fee.

Finally, it should be noted that the 1988 budget reflects, for the first time, the 9,600-baud workstation network. Cost allocations for this resource were made differently than the 2,400-baud network because of technological differences in the form and nature of message traffic. Specifically, the 9,600-baud network is not used in the traditional polled query/response mode that permits the identification and measurement of discrete messages, in contrast to the 2,400-baud network. Therefore, the 9,600-baud network was divided into two discrete operations for cost allocation purposes. One-half of the line costs was assigned to download transmissions that supply current information to the local data bases resident in each subscriber's NASDAQ Workstation ™ unit; the other half was assigned to the quote update and trade reporting functions that enable subscribers to send updated information to the central processor.

In the 2,400-baud network, a substantial portion of the network's capacity is used to support the query function. By contrast, the 9,600-baud network is used to distribute NASDAQ data to individual NASDAQ Workstation ™ units, which then service subscriber inquiries locally. Thus, countable queries are no longer processed through the network, but instead are processed at each workstation, with no impact on the network nor any means to measure them. The distribution of data to each local database is the functional replacement for the query/response process. The network operates in a full duplex mode, *i.e.*, inbound and outbound traffic can flow simultaneously. The data distribution process uses the full outbound channel in replacing the query function and is therefore allocated 50% of the associated line costs. Since the full inbound channel is dedicated to input functions (*i.e.*, quotation updating and trade reporting) without any contention from query traffic or traffic on the outbound channel, it is similarly allocated 50% of the line costs.

The relative proportion of line costs allocated between the quote update and trade reporting functions was based on the relative volumes of quote updates and trade reports found in the 2,400-baud network. (It was assumed that the relative volumes of quote updates and trade reports entered by A NASDAQ market maker would not vary with the type of Level 3 equipment which he elected to use.) This resulted in a 30% allocation of 9,600-baud network costs to the update function and 20% to trade reporting. As noted above, the other 50% was assigned to the download function.

All other direct network costs, including concentrator facilities and processors, trunks, network personnel, and facilities were allocated between the 2,400-baud and 9,600-baud network resources based on the relative number

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[2] The 9,600-baud networl supports NASDAQ Workstation™ units.

[3] Query traffic was included in determining the network and processor occupancies used to effect the foregoing cost allocations. As a result, substantial portions of network and processor costs were allocated to the query function.

[4] Data storage costs allocated to the NQDS service reflect the limited storage of NQDS information while it is being validated prior to its transmission to vendors.

of devices served by each network as included in the 1988 budget (*i.e.*, approximately 81% to the 2,400-baud network and 19% to the 9,600-baud network).

b. Support Costs Allocated to Resources and Services

(i) *Development Costs*

The Systems Engineering and Systems Development departments perform vital roles respecting maintenance of the NASDAQ system as well as the development and implementation of new software applications. These departments' costs (which include direct labor, occupancy charges, travel, etc.) have been fully allocated to the two communication networks and the processor resources previously cited. These allocations were based on the level of effort expected to be devoted to those four resources as determined by historical patterns or specific assignment of staff, as appropriate.

(ii) Overhead and G&A Costs

Overhead and G&A costs arise from the ongoing activities of certain departments supporting the operation and development activities respecting the NASDAQ system. These organizational units include service departments that provide a direct liaison with subscribers, vendors and members—the NASDAQ System's customer base. Overhead and G&A costs include the following support departments: (1) Accounting (2) Systems Planning and Review—a strategic function associated with planning system architecture and automation initiatives; (3) Information Services—a subscriber service and vendor liaison function concerned with initiation of service contracts, contract compliance, and responding to billing inquiries from vendors/subscribers; and (4) Market Services—a product support function associated with marketing and explaining the use of new and existing services through interaction with subscribers, vendors and members. Overhead and G&A costs also include the allocated portions of certain parent company corporate departments that manage or support consolidated activities. These consist of excecutive management and the Board of Governors at the policy level; Legal; Communications; Administrative Services (purchasing and plant/office management); Treasurer (including accounting, payroll, and taxes); and Human Resources.

Each of the aforementioned departments was analyzed to determine the extent to which its overhead and G&A costs had a direct relationship to a specific resource or service. For purposes of this process, the NASD defined the following eleven service categories: (1) Level 1, (2) Last Sale, (3) Level 2/3, (4) NQDS, (5) SOES (6) TARS/MBARS (7) CAES, (8) CTCI, (9) Mutual Funds, (10) NASDAQ/NMS Ticker and (11) ACES. Some illustrations will clarify this allocation technique. For example, Accounting Department costs respecting the billing, receipt, and collection of NASDAQ revenues were allocated to individual services (Level 1, Level 2/3, etc.) based on the relative number of invoices generated annually by each service. With respect to Systems Planning and Review, costs were allocated among the networks and processor resources based on the anticipated level of support, in the form of strategic planning, affecting the applications or architecture of those resources. Finally, NASDAQ service department costs were assigned to system application based on the specific service area (TARS, SOES, etc.) supported by personnel assigned to those service departments.

After allocating overhead and G&A costs based on direct relationships to resources and services, it was necessary to allocate residual overhead and G&A (collectively referred to as "residual costs") on a rational basis. Since no definable relationship could be established to match the incurrence of such costs to the consumption of the resources or services, residual costs were assigned by means of a total cost input base. Essentially, this entailed allocating residual costs to services and resources in approximately the same proportion that direct costs and causal overhead and G&A costs had been allocated directly to the services/resources. Accordingly, residual costs were distributed using a base of total costs. In this way, the residual costs are added to resource and service pools in relation to the costs of labor, owned equipment, and space utilized to operate the business.

c. Allocation of Indirect Resource Costs to Processing Functions

It must be recalled that the six resource pools previously identified consist of computer hardware and telecommunications facilities that perform functions integral to the delivery of system services such as the NQDS. The performance of these functions depends upon specialized software used in conjunction with the hardware resources. Operating costs (both direct and indirect) assigned to those resources must be apportioned among the respective functions that each resource supports. In so doing, it becomes possible to aggregate functional costs aggregate functional costs attributable to individual services such as the NQDS. This segment of the discussion focuses on the allocation of indirect resource cost [5] among the processing functions within the affected hardware facilities.

The NASD employed traffic-based measures to assign indirect costs to the functions supported by the 2,400-baud Network/Communications, Unisys Storage, and Tandem Storage resources.[6] With respect to the Tandem and Unisys Processor resources, the NASD determined to allocate indirect costs to the functions on the basis of the functional complexity of the software applications running through the processors. The rationale was that a direct relationship exists between the complexity of a particular system module and the amount of staff and resources needed for its ongoing support.[7] To effect an allocation of indirect costs on this basis, it is first necessary to development a measure software complexity.

(i) Determining Functional Complexity

A sound measure of software complexity has three essential characteristics: (i) It will be reproducible when consistently applied under similar conditions; (ii) it will be independent of the modules it is measuring, and, consequently, unbiased by the measurement process; (iii) it will be unaffected by factors not directly related to the functions performed. A time-related measure having all of these

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[5] In accounting for costs in any large-scale data processing system like NASDAQ, there will remain a pool of costs neither directly allocable to services based on measures of production output nor specifically identifiable with a service. In NASDAQ, this pool contains residual costs (after direct allocation of overhead and G&A to either hardware resources or services) and the costs associated with technical staff performing program maintenance and development. These costs are "indirect" in that they are not traceable to the production and delivery of specific services. Rather, these costs are incurred as a consequence of operating the NASDAQ system in support of the NASDAQ market. These indirect costs constitute the support costs of doing business, mainly personnel and related overhead costs.

[6] These were the same traffic-based measures used in assigning direct resource costs to the functions associated with these three resources. Similarly, the 50%–30%–20% formula was used to make functional allocations of indirect costs to the functions supported by the 9,600-baud network. It should be noted that storage costs assigned to functions supporting the NQDS service are strictly related to the collection, validation, and dissemination of NQDS data.

[7] This measure is unrelated to the frequency with which users invoke the services traceable to various functions underlying the hardware recources. Simply put, the maintenance and support of a software program is dependent on the relative complexity of its design, not the number of times the program is invoked to process a message.

characteristics can be defined. More specifically, the discrete time required for an individual transaction in the NASDAQ system, omitting the time spent waiting for completion of input/output operations or any voluntary delay or system overhead time, is such a measure. The Unisys/Tandem processors in the NASDAQ complex have internal clocks which are processed by the operating systems. It is therefore possible to generate time-based measurements that are acurate, reproducible, unbiased, and performed externally with respect to the module being measured. Factors such as choice of programming language and programming style do not affect the measurement. Only the actual instructions being interpreted by the CPU are being measured.

(ii) Cost Allocation/Functional Complexity

The costs being allocated on the basis of complexity consist of the indirect costs of the design and maintenance of the functions operating within the system. In this regard, the update function is inherently more complex than, for instance, the query and NQDS functions, as measured by the CPU time required for processing an individual quotation update. The more complex the function, the greater is the level of personnel and related resources needed to program, maintain, and enhance that function. It should be noted, however, that the complexity of the function bears no relationship to the frequency of its use or operation. Thus, the level traffic in the system does not determine the level of staff nor the sophistication of programs dedicated to supporting CPU functions.

As previously described, the complexity of a particular function can be determined by reference to the CPU time required to conduct that function. The CPU time involved in each function had been measured during the original Coopers & Lybrand functional analysis of the NASDAQ system. Those measurments were repeated and verified during the second quarter of 1988. The CPU time required solely for the function of processing an update transaction accounts for approximately 41% of the total of individual CPU timings for all functions in the UNISYS processor. The indirect resource costs attributable to all functions in the UNISYS processor amount to $4,545,248. Thus, the indirect resource costs assigned to the update function on the basis of complexity amount to $1,874,460.

d. Allocation of Common Costs to Quotation Delivery Services

The NASD computed a common update cost pool in the amount of $3,673,173. This figure includes all of the costs associated with the collection, validation, processing, and preparation for dissemination of quotations in NASDAQ regular and NASDAQ/NMS securities.

As a first step, the common update cost pool was assigned to the two broad categories of quotation delivery services, *i.e.*, Level 1, which receives only inside market quotation changes, and Level 2/3 and NQDS, which receive all market maker quotation changes. This assignment is based on the assumption that the product being sold is quotation information actually delivered to vendors or subscribers of these services. System statistics reveal that an inside quotation change appears of Level 1 once for every 3.79 quotation updates delivered to Level 2/3 and NQDS. This proportion of 1 for every 3.79 was determined by direct measurements made during the second quarter of 1988. The actual daily averages consisted of 15,205 inside changes for 57,668 quotation updates. Based upon these measurements, it is believed reasonable to allocate the update function costs between Level 1 and 2/3 and NQDS based on this observed proportion of 1 to 3.79. The actual ratios to Level 1 and Level 2/3 and NQDS are based on the mathematical sum of the additive information units. That is, the units of information consisted of 15,205 for Level 1 and 57,668 for Level 2/3 and NQDS for a total of 72,873 during the period measured. Thus, the portion of the update cost pool allocable to the Level 1 service category is 1/4.79 or 21%; while 79% (3.79/4.79) of the common cost pool is assigned to the Level 2/3 and NQDS service categories. Level 2/3 and NQDS share of common update costs: 79% x $3,673,173=$2,901,806.

(i) Allocation of Costs to Specific Services

The common update costs assigned to the level 2/3 and NQDS services must be spread over the population of terminal devices/NASDAQ Workstation™ units receiving the particular category of service. The basis for spreading these costs was the ratio of the population of terminal devices/NASDAQ Workstation™ units receiving the particular service to the total population of devices receiving either Level 2/3 or NQDS service. The fiscal 1988 budgeted terminal populations projected to receive services in either the Level 2/3 or NQDS service category are as follows:

		(In percent)
Level 2/3 (including NASDAQ workstation™ units)	3,755	52
NQDS	3,525	48
Total	7,280	100

Based upon this allocation method, the $2,901,806 in update costs is divided between the Level 2/3 and NQDS service categories by assigning 52% to the Level 2/3 service, and 48% directly to the NQDS service. The result is as follows:

NQDS share of common costs: $2,901,806×48%=$1,392,867.

(ii) Determination of an NQDS Fee

The total NQDS cost pool, to be spread over all budgeted NQDS terminals, is the sum of the NQDS share of common update costs plus the directly assignable costs incurred in delivering NQDS service.

NQDS cost pool: NQDS share of common costs+NQDS direct costs=$1,392,867+$752,639=$2,145,506

The annual cost and resulting service charge per terminal receiving NQDS service is computed by dividing the entire NQDS cost pool by the number of budgeted NQDS terminals.

NQDS service charge: Total NQDS costs/NQDS terminal population=$2,145,506/3,525=$609 per year or $50.75 monthly.

e. Retroactive Application of Fee

The genesis of this rule filing dates back to 1983 when a vendor of securities information that sought to market the NQDS service initially objected to the level of the applicable fee. The subsequent proceedings (summarized in the next section) resulted in the Commission's establishing interim fees that would be payable to the NASD until such time that the NASD obtained Commission approval of a cost-based, terminal charge for NQDS service. This has permitted vendors to market the NQDS service pending the NASD's submission and the Commission's approval of an acceptable subscriber fee. Assuming Commission approval of the fee proposed in this filing, it is the NASD's position that such fee will apply retroactively to the entire period for which this service was made available. The NASD previously articulated the legal bases supporting this position in its

comment letter of May 14, 1986.[8] That letter was submitted in connection with the Commission's institution of proceedings to determine whether to approve or disapprove the NASD rule proposal designated File No. SR–NASD–85–19; that filing embodied an earlier effort to establish an acceptable NQDS fee. The NASD hereby incorporates by reference its May 14, 1986 letter supporting retroactive application of the NQDS subscriber fee ultimately approved by the Commission.

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Exhibits A–C of this rule filing illustrate the cost allocation procedures discussed in the body of the filing. Exhibit D includes a review opinion issued by Ernst & Whinney, the NASD's auditors, indicating that their review did not disclose any information that the methodology and calculations used in deriving the proposed NQDS fee are not in conformity with the Commission's order.

2. Discussion of Statutory Bases and Prior Proceedings

In June of 1983, the NASD made its initial rule filing with the Commission to establish an intended schedule of fair and reasonable fees for provision of the NQDS service.[9] The 1983 fee proposal called for $3,200 per month vendor fee to recover the Associations' costs of transmitting NQDS data, on a computer-to-computer interface, to an interested vendor. The 1983 fee proposal also provided that NQDS subscribers (*i.e.*, customers of any vendor marketing the NQDS service) would pay the NASD a monthly fee of $150/terminal for receipt of NQDS data, the same fee paid by all Level 2/3 subscribers. On July 15, 1983, the lone vendor interested in marketing the NQDS service (hereinafter referred to as the "Vendor") filed a petition with the Commission, pursuant to Section 11A(b)(5) of the Act, alleging that the proposed fees constituted an inappropriate limitation or prohibition on access to services provided by the NASD as an exclusive processor of securities information.[10]

The ensuing proceedings entailed the entry of various letters, motions, evidentiary submissions and briefs into the record and the Commission's issuance of multiple orders to advance the proceedings. The most significant order, however, was issued by the Commission on April 17, 1984.[11] Among other things, the April order held that: (1) The $3,200/month vendor fee was not an inappropriate prohibition or limitation on vendor access to the NQDS service under section 11A(b)(5) of the Act; (2) the imposition of some fee based on the number of terminals subscribing to the NQDS service also was not an inappropriate prohibition or limitation on access to NQDS service in reference to section 11A(b)(5) of the Act; (3) the proposed NQDS subscriber fee of $150/terminal/month contravened section 11A(b)(5) because it included the cost of operating the Level 2/3 query function, which function was not included in the NQDS service to be provided to the Vendor; and (4) in formulating an acceptable subscriber fee for NQDS service, the NASD may recover only those costs of operating a "pass-through" system that collects, validates, and prepares quotations for shipment to the Vendor.

During the latter half of 1984, the NASD filed two motions requesting the Commission's reconsideration of the April order. Both were rejected.[12] The NASD then petitioned the United States Court of Appeals for the District of Columbia for review of the April order.[13]

On July 31, 1985, the NASD submitted a rule filing, designated File No. SR–NASD–85–19, proposing a cost-based subscribed fee of $79/terminal/month for NQDS service. This fee was based on a comprehensive analysis, which had been performed by Coopers & Lybrand, of the NASDAQ system and the costs attributable to specific functions within NASDAQ (the "C&L Study"). After publication of notice and receipt of comments on the proposed rule change, the Commission instituted proceedings, pursuant to Section 19(b)(2)(B) of the Act, to determine whether to approve or disapprove File No. SR–NASD–85–19.[14]

First, the Commission noted that the C&L Study, relied upon by the NASD, included certain quotation query costs among common costs apportioned to NQDS subscribers. The Commission observed that this was contrary to the terms of the April order. As such, the Commission was unable to find, pursuant to Section 15A(b)(9) of the Act, that the proposed rule change did not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Second, the Commission questioned whether the proposed fee was truly cost-based. Specifically, the Commission focused on the C&L Study's use of a stored quotation as a unit of cost and the resulting disparity in allocated costs between Level I subscribers (who receive only one quotation, the inside market, per NASDAQ security) and Level 2/3/NQDS subscribers (who were calculated to receive an average of 8 market maker quotes per NASDAQ security plus the inside market quote) based on the average number of quotes available to subscribers in these categories. The Commission therefore declined to find that the proposed fee was cost-based (in accord with the requirement of the April order) and consistent with requirements of section 15A(b)(5) of the Act, which stipulates the "equitable allocation of reasonable * * * charges * * * among persons using any facility or system which the association operates or controls." Third, the Commission questioned the NASD's use of a cost multiplier, which was intended to offset projected expenses for the ensuing three years, in calculating the $79/month NQDS terminal charge.

The derivation of the NQDS terminal fee proposed in the instant filing conforms in the strictest possible sense to the directives enunciated in the Commission's April order. Similarly, this computation is responsive to the concerns raised in the Commission's order instituting disapproval of the fee proposed in File No. SR–NASD–85–19. More specifically, the instant fee is cost-based in that methodology used in its computation allocated all applicable costs (both direct and indirect) among system services in a manner that is systematic, reasonable, and in accord with established cost accounting principles. The cost allocated to the NQDS service have been carefully limited to those cost items related to the collection, validation, and preparation of quotation information for dissemination to a vendor. Moreover, the allocation procedures were designed to avoid inclusion of costs related to the quotation query function in the NQDS

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[8] *See* letter dated May 14,1986 from Mr. Frank J. Wilson, Executive Vice President and General Counsel, NASD, to Mr. John Wheeler, Secretary, Securities and Exchange Commission, Re: File No. SR–NASD–85–19.

[9] *See* File No. SR–NASD–83–13, Securities Echange Act Release No. 19884 (June 17, 1983), 48 FR 29086 (the "1983 fee proposal").

[10] In its petition, Vendor also sought access to market makers' quotations for all NASDAQ securities, not just the subset of NASDAQ/NMS securities originally contemplated.

[11] *See* Securities Exchange Act Release No. 20874 (April 17, 1984), 49 FR 17640 (the "April order").

[12] *See* Securities Exchange Act Release Nos. 21471 (November 8, 1984), 49 FR 45282, and 21832 (March 8, 1985), 50 FR 10565, respectively.

[13] The Circuit Court ultimately affirmed the Commission's action in September of 1986. *See NASD v. SEC.*, 801 F.2d 1415 (D.C. Cir. 1986).

[14] *See* Securities Exchange Act Release No. 34–22935 (February 21, 1986), 51 FR 6957. Although these proceedings have not yet concluded, the NASD intends to withdraw File No. SR–NASD–85–19.

cost pool for purposes of determining the proposed fee. Exhibit D contains a review opinion from Ernst & Whinney, NASD's auditors, indicating that their review did not disclose any information that the cost accounting methodology and calculations as expressed in the present fee determination are not in conformity with the directives included in the Commission's April order. In fact, the auditors' review resulted in the NASD agreeing to make certain downward adjustments to more fully conform to the methodology outlined by the Commission.

It should also be noted that the computation of the proposed fee does not include any "cost multiplier" as was used in deriving the $79 charge that had been proposed in File No. SR–NASD–85–19. Further, the allocation of indirect resource costs to the NQDS service was based upon a measure of software complexity versus quotation traffic. This refinement responds to a specific concern expressed in the Commission's order instituting disapproval proceedings respecting File No. SR–NASD–85–19. Quotation update traffic is used, however, to allocate the update cost pool among the Level 1, Level 2/3 and NQDS service categories. The ratios used for this allocation were based upon direct measurement of quote updates and inside market changes completed during the second quarter of 1988. Hence, this approach is both objective and appropriate given the nature of this particular cost pool and the affected service categories.[15] Nonetheless, the update cost pool represents only about 7% of the budgeted 1988 costs for NASDAQ, Inc. and NASD Market Service, Inc. (*i.e.*, the costs of operating current automated systems).

Finally, the proposed terminal charge is computed based on an NQDS terminal population of 3,525 which was reflected in the 1988 budget of the subsidiaries. This figure closely approximates the actual terminal population at this time.

For the foregoing reasons, the NASD believes that this proposed NQDS fee is fully consistent with the pertinent portions of the following Exchange Act provisions:

Section 15A(b)(5)—which prescribes that the NASD's rules provide an equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system that the NASD operates or controls;

Section 15A(b)(6)—which requires, among other things, that the NASD's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in processing information with respect to and facilitating transactions in securities; and that the NASD's rules not be designed to permit unfair discrimination between customers, brokers, or dealers.

Section 15A(b)(9)—which requires that the NASD rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

As the SRO for the NASDAQ market, the NASD collects and disseminates an array of information including market makers' quotations. The NASD's distribution of such information, especially the terms which it is distributed to different classes of users, must be guided by certain principles set forth in Exchange Act Section 11A(c)(1). In this regard, the NASD submits that the proposed terminal charge, as a term of access to NQDS information, satisfies the standard of Section 11A(c)(1)(C) because it was computed to assure that securities information processors obtain NQDS data for redistribution on fair and reasonable terms. The NASD believes that it has satisfied the standard of access on "fair and reasonable terms" (which was designed to protect processors/vendors who redistribute market data originated by an SRO) by reducing the NQDS terminal charge to $50.75, which figure reflects the costs solely attributable to collecting, validating, and preparing NQDS information for transmission to vendors. Although the proposed NQDS fee is not borne directly by vendors who redistribute NQDS data, the NASD recognizes that the proposed fee impacts the pricing of the information service (or combination of services) that a vendor provides to end users. Nonetheless, assuming Commission approval of the proposed fee, vendors should have no difficulty competing for subscribers considering that the NASD's Level 2 quotation service has a monthly subscriber charge of $150 per terminal plus $.02 per quote request (which on average adds $139 per month) versus the corresponding NQDS charge of $50.75 per terminal. Similarly, it must be recalled that the monthly service fee for receipt of Level 2 service via the NASDAQ Workstation™ service is $300.

Lastly, the Association believes that the proposed NQDS charge is consistent with the intent of Section 11A(c)(1)(D). In pertinent part, that provision specifies that exchange members, brokers, and dealers be able to obtain quotation information distributed by any SRO or securities information processor on terms that are not unreasonably discriminatory, subject to any limitations imposed by the Commission. Although the proposed NQDS terminal charge of $50.75 appears to discriminate against subscribers to the NASD's Level 2 service, the computation of the new NQDS fee strictly follows the requirements established by the Commission's April order. Any discriminatory impact on end users flowing from approval of the instant fee appears to fall within the scope of regulatory discretion granted to the Commission under Section 11A(c)(1)(D). By adhering to the Commission's directives in computing the proposed NQDS fee, it follows that the NASD must be acting in a manner consistent with that provision.

B. Self-Regulatory Organization's Statement on Burden on Competition

For the reasons set forth in the preceding section, the NASD posits that implementation of the proposed NQDS subscriber fee of $50.75/terminal/month will pose no burden on competition. This position is supported by the NASD's concerted efforts to re-compute the NQDS subscriber fee in strict compliance with the Commission's April order. Those efforts yielded a cost-based subscriber fee some 36% less than the fee proposed in File No. SR–NASD–85–19. Similarly, the instant fee is some 66% less than the $150/terminal charge assessed for the comparable level 2 service offered by the NASD. Accordingly, the NASD reiterates that Commission approval of the NQDS terminal charge of $50.75/month will impose no competitive burden on vendors on NQDS data.

Based upon the foregoing, it is believed that no competitive burden will result from the Commission's approval of this filing.

C. Self-Regulatory Organization's Statement on Comments On the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

[15] Quotation update traffic attributable to the level 2/3 and NQDS service categories differs markedly from the costing methodology articulated in File No. SR–NASD–85–19. In the latter context, costs were allocated to system services based on ratios that reflected the absolute volume of quotations that were accessible to a subscriber of each service. In the instant filing, however, quotation update traffic refers to measurement of the process of collecting, validating, and preparing revised quotes for actual delivery to subscribers.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities, and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–88–35 and should be submitted by October 25, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: September 27, 1988.

[FR Doc. 88–22819 Filed 10–3–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16578; (812–7013)]

Massachusetts Mutual Life Insurance Co. et al.; Application

September 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Amendment to an Existing Order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Massachusetts Mutual Life Insurance Company ("Insurance Company"), MassMutual Corporate Investors ("Fund I") and MassMutual Participation Investors ("Fund II", collectively with Fund I, the "Funds").

Relevant 1940 Act Sections: Amendment to an Existing Order pursuant to section 17(d) and Rule 17d–1 thereunder.

Summary of Application: Applicants seek an amendment to an existing order (Investment Company Act Rel. No. 14532, May 21, 1985, "Existing Order") to add Fund II as a party to such order and to permit Fund I and Fund II or either of them to participate together with the Insurance Company in suitable privately placed securities on an equal or less than equal percentage basis then the Insurance Company.

Filing Dates: The Application was filed on April 8, 1988, and amended on August 5, September 15, and September 23, 1988. Counsel for Applicants submitted letters on September 1, and September 22, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on October 18, 1988. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, c/o Woodrow W. Campbell, Esq., Debevoise & Plimpton, 875 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272–3047, or Brion R. Thompson, Branch Chief (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Insurance Company is a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts. Fund I is a non-diversified, closed-end management investment company registered under the 1940 Act. Fund II is a newly organized diversified closed-end management investment company registered under the 1940 Act. Applicants seeks to amend the Existing Order which authorizes the Insurance Company (the investment adviser to Fund I and sponsor and investment adviser to Fund II) to invest concurrently for its general account in each issue of privately placed securities purchased by Fund I.

2. Fund I invests, and Fund II intends to invest, primarily in privately placed, fixed-income securities ("Private Placement Securities"). All Private Placement Securities in which Fund I invests are accompanied by equity features, which form a part of the package purchased. Such Private Placement Securities having equity features include convertible debt, debt sold as units involving common stock or warrants to purchase common stock, and convertible preferred stock. Fund II may also invest in Private Placement Securities having equity features but may also invest in Private Placement Securities without equity features.

3. Under the terms and conditions of the Existing Order, the Insurance Company is required to offer Fund I the opportunity to purchase up to half of the amount of each class of Private Placement Securities having equity features in which the Insurance Company intends to invest. In recent years, however, the Board of Trustees of Fund I has with increasingly frequency elected to invest in a smaller percentage portion of such investments than the Insurance Company. In general, when Fund I has elected to invest in a smaller percentage portion than the Insurance Company, it has done so by limiting its investment to $3 million (approximately 2% of Fund I's total assets). This reflects a determination of the appropriate level of investment by Fund I in any single transaction in order to preserve diversity in Fund I's portfolio.

4. This pattern also indicates that the amount of co-investment opportunities in Private Placement Securities having equity features currently generated by the Insurance Company often exceeds the investment requirements of Fund I. This is a result in part of the fact that the Insurance Company's own assets have grown at a quarter rate than Fund I's assets thereby making it more appropriate for the Insurance Company to seek larger participations in Private Placement Security investment

opportunities. Based on its experience in the Private Placement Securities market, the Insurance Company expects that co-investment in Private Placement Securities by all three Applicants, as contemplated by the requested amended order, would enable the Applicants to participate in larger investments than are presently available to the Insurance Company and Fund I. The Insurance Company expects that many such larger investment opportunities will be available to all of the Applicants if the requested order is granted.

Applicants' Conditions

1. Applicants request that the Existing Order be amended to add Fund II as a party and to amend and restate the conditions contained therein, by substituting, in lieu thereof, the following conditions:

A. Each time the Insurance Company proposes to acquire Private Placement Securities having equity features, the acquisition of which would be consistent with the investment objectives and policies of both Fund I and Fund II, the insurance Company will offer both Fund I and Fund II the opportunity to acquire an amount of each class of such private placement Securities equal to the amount proposed to be acquired by the Insurance Company. Each time the Insurance Company proposes to acquire Private Placement Securities without equity features, the acquisition of which would be consistent with the investment objective and policies of Fund II, the Insurance Company will offer Fund II the opportunity to acquire an amount of each class of such Private Placement Securities equal to the amount of such Private Placement Securities proposed to be acquired by the Insurance Company. Each of Fund I and Fund II may choose to acquire none of such securities or any amount of such securities up to the entire amount of securities offered to it by the Insurance Company. If either Fund shall have declined such offer or accepted a portion of Private Placement Securities offered to such Fund, the Insurance Company shall offer the other Fund up to 50% of the aggregate amount of such Private Placement Securities then available for acquisition; *provided* that the amount of any individual issuance of Private Placement Securities acquired by either Fund shall not exceed the amount of such issuance of Private Placement Securities aquired by the Insurance Company.

B. If Fund I and Fund II choose or either of them chooses to acquire Private Placement Securities concurrently with the Insurance Company, then the Insurance Company, Fund I and Fund II or either of the Funds together with the Insurance Company may acquire such Private Placement Securities at the same time and at the same unit price without further order of the SEC. If Fund I or Fund II chooses to acquire Private Placement Securities, but to acquire less than the entire amount of such securities offered to it by the Insurance Company, such Fund's decision must be approved by the Board of Trustees of such Fund, including a majority of the Trustees who are not "interested persons" of such Fund or the Insurance Company, as defined in the 1940 Act ("Independent Trustees"). The determination of Fund I or Fund II to acquire less than all of such securities and the reasons therefor will be recorded and become a part of the permanent records of such Fund.

C. If Fund I or Fund II chooses not to acquire any Private Placement Securities offered to it by the Insurance Company, such Fund's decision must be approved by the Board of Trustees of such Fund, including a majority of the Independent Trustees. The determination of Fund I or Fund II not to acquire such Private Placement Securities and the reasons therefor will be recorded and become a part of the permanent records of such Fund.

D. None of the Insurance Company, Fund I or Fund II shall "make available significant managerial assistance" (within the meaning of Section 2(a)(47) of the 1949 Act) to any issuer (a "Portfolio Company") of a Private Placement Security that is acquired in a joint transaction by the Insurance Company and the Funds or either of them. However, the Insurance Company and the Funds may take steps to protect their rights as creditors.

E. None of the Insurance Company, Fund I or Fund II shall be involved in the sponsorship of any Portfolio Company.

F. None of the Insurance Company, Fund I or Fund II shall be materially involved in the structuring of any Portfolio Portfolio Company or of any Private Placement Security issued by a Company; *provided* that the Insurance Company may take part in the negotiation of the terms (such as coupon, final maturity, average life, sinking funds, conversion price, registration, put rights and call protection) and appropriate restrictive covenants governing Private Placement Securities.

G. The Insurance Company shall not receive any transaction fees in connection with any investment in any security of a Portfolio Company (such fees include monitoring, "topping," breakup, and termination fees).

H. Unless otherwise permitted by special order of the SEC, none of the Insurance Company, Fund I and Fund II will exercise warrants, conversion privileges, or other rights relating to Private Placement Securities having equity features of a class held by Fund I and Fund II or either of them and the Insurance Company, except at the same time and in amounts proportinonate to their respective holdings of such Private Placement Securities.

I. Unless otherwise permitted by special order of the SEC, none of the Insurance Company, Fund I and Fund II will sell, exchange or otherwise dispose of any interest in any Private Placement Security of a class held by Fund I and Fund II or either of them and the Insurance Company unless such dispositions are made at the same time, for the same unit consideration and in amounts proportionate to their respective holdings of such Private Placement Securities.

J. The expenses, if any, associated with acquiring, holding or disposing of any Private Placement Securities (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act of 1933) shall, to the extent not payable solely by the Insurance Company under its investment management agreements with each of the Funds, be shared by the Insurance Company and the Funds in proportion to the relative amounts of such securities held or being acquired or disposed of, as the case may be, by the Insurance company and each of the Funds.

K. The Independent Trustees of each Fund will be provided quarterly for review all information concerning co-investments made by the Insurance Company and each such Fund, including investments made by the Insurance Company in which such Fund declined to participate, so that the Independent Trustees may determine whether all investments made during the preceding quarter, including those investments in which such Fund declined to participate, comply with the conditions set forth above.

L. Each of the Applicants will maintain and preserve all records required by Section 31 of the 1940 Act and any other provisions of the 1940 Act and the rules and regulations thereunder applicable to such Applicant.

2. For purposes of the requested order, any securities acquired or held by Applicants that are identical in all respects except for the fact that only securities acquired and held by both Funds or either of them have voting rights shall be considered to be of the same class of securities.

Applicants' Legal Conclusion

1. Applicants submit that the proposed amended order will provide Fund I and Fund II with the necessary flexibility to co-invest in Private Placement Securities on an equal or less than equal basis with the Insurance Company. An investment opportunity offered to Fund I or Fund II by the Insurance Company may be appropriate and beneficial to such Fund in all respects except size. If Fund I and Fund II have the discretion to invest a lesser percentage than the Insurance Company, Fund I and Fund II may immediately take advantage of any such opportunity while ensuring that its investment in any one issuer is prudently proportionate to its own asset base.

2. Applicants state that since any decision to invest in a lesser percentage than the Insurance Company must be approved by the Board of Trustees of Fund I and Fund II, including a majority of the Trustees who are not "interested persons" of such Fund, as defined in the 1940 Act, and since the Insurance Company will always have the same or a greater amount "at risk" in each investment as each of Fund I or Fund II, the Applicants submit that there are

ample safeguards to assure that any participation by Fund I or Fund II in such Private Placement Securities will not be on a basis less advantageous than that of the Insurance Company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-22821 Filed 10-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16575; (812-7020)]

The Pierpont Money Market Fund et al.; Application

September 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Pierpoint Money Market Fund, The Pierpont Tax Exempt Money Market Fund, The Pierpont Tax Exempt Bond Fund, The Pierpont Equity Fund, The Pierpont Capital Appreciation Fund and The Pierpont Bond Fund.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 32(a)(1).

Summary of Application: Applicants seek an order to permit them and any future funds within the Pierpont Mutual Fund Group to file with the SEC financial statements signed or certified by an independent public accountant selected at a Board of Trustees meeting held more than thirty but not more than ninety days before or after the beginning of their respective fiscal years.

Filing Dates: The application was filed on April 22, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 24, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, c/o Carol R. Schepp, Esq., The Pierpont Funds, Morgan Stanley & Co. Incorporated, 1221 Avenue of the Americas, New York, NY 10020.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief, (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations and Analysis

1. Applicants are diversified, open-end management investment companies, organized as trusts under the laws of Massachusetts, and are part of the investment company complex known as the Pierpont Mutual Fund Group. Each Applicant is advised by Morgan Guaranty Trust Company of New York; the principal underwriter and administrator of each Applicant is Morgan Stanley & Co. Incorporated.

2. The same independent public accountant currently serves each of the Applicants. The four fiscal years-end of the Applicants (May 31, August 31, October 31 and November 30) were designated so as to permit the economic utilization of resources for both the accounting personnel of the administrator and the personnel of the independent accountant. The accountant's audit programs are designed so that test work for several Applicants is often done at the same time. Therefore, the decision to select the independent public accountant ideally should occur for all Applicants at the same point of time each year.

3. Applicants are not required by state law to hold annual shareholders' meetings. Therefore, unless shareholder action is required for some reason, it is the intention of each Applicant that an annual meeting will not be held. Accordingly, under the provisions of section 32(a)(1) of the 1940 Act Applicants now will have to select their independent public accountant within thirty days before or after the beginning of each Applicant's fiscal year.

4. The membership of each Applicant's Board of Trustees is identical. The procedures followed by the Trustees for the selection of independent public accountants are uniform for all the Applicants, and involve all of the Trustees, including the four disinterested Trustees. The Trustees have been reviewing the selection of the accountants at four separate meetings reflecting the different fiscal years-end for each Applicant. In each of these meetings, the Trustees discuss the scope of the audit, the significant audit procedures to be applied and items on continued interest applicable to each of the Applicants. Since all meetings of the Trustees are held in joint session, the most efficient way to proceed with the selection of the independent public accountants is to have the matter appear on as few meeting agendas during the year as possible.

5. Each Applicant proposes to select an independent public accountant at a regularly scheduled Board of Trustees meeting, held within ninety days before or after the beginning of its fiscal year. The application of section 32(a)(1) of the 1940 Act to the Applicants would require one or more additional meetings of the Board of Trustees for the sole purpose of selecting the same independent public accountant for each Applicant. Therefore, the Applicants are seeking an order to permit them to file financial statements signed or certified by an independent public accountant which has been selected at a meeting held within ninety days before or after their respective fiscal years-end. By so doing, Trustees meetings on a complex-wide basis could be arranged so that the selection of an independent public accountant need be considered only twice each year.

6. Each Applicant submits that it would be desirable for it to consider the selection of its independent public accountant at a regularly scheduled Board meeting during its fiscal year. Expanding the thirty day window under section 32(a)(1) to ninety days will permit a regular and systematic consideration of the independent public accountant for complexes at a meaningful interval of time. This is preferable to the review of audits and consideration of the selection at four of the five regular meetings, or a change in the desired meeting schedule which would be required if the thirty day window is not expanded.

7. By permitting the scheduling of the selection of the independent public accountant twice a year through expanding the window from thirty to ninety days, the SEC will allow a Trustees' review procedure to be put into place that will ensure that selection of the Applicants' independent public accountant is considered on a systematic basis. The procedures will provide for a detailed review of the services furnished by the independent public accountant to each Applicant and result in the Trustees' consideration of all information developed as a result of

the experience with each audit. Further, the process will more accurately reflect the reality of doing business in complexes having a substantial number of funds which is different from the time when the 1940 Act was passed and funds were operated on an individual basis or in small fund groups.

8. For the reason set forth above, Applicants submit that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants, therefore, request that the SEC issue an order, pursuant to section 6(c) of the 1940 Act, Granting the exemption as requested.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-22818 Filed 10-3-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1220]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 0930 on October 18, 1988, in room 6319, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The meeting will be held to discuss three major issues and will be organized to allow three separate discussions, one following the other. The first issue is the U.S. preparation for the 56th session of the Maritime Safety Committee (MSC) of the International Maritime Organization (IMO) which will be held from October 24–28, 1988 in London at the IMO headquarters. This meeting will consider, interalia, a series of measures which will impact the safety of Roll on/Roll off passenger vessels. Also on the agenda will be a review of the status of implementation of the IMO Measures on the Prevention of Unlawful Acts Against Passengers and Crew Aboard Vessels.

During the period of October 31–November 11, 1988 there will be three separate international conferences. The second major issue to be discussed at the SHC meeting will be two of these conferences which will consider amendments to the 1974. Safety of Life at Sea Convention (SOLAS) concerning requirements for emergency communications. IMO has been working on preparing these amendments for the past ten years and has developed a comprehensive set of requirements designed to improve emergency communications aboard commercial ships. The system, as envisioned, is called the Global Maritime Distress and Safety System (GMDSS).

The last issue to be discussed at the SHC meeting will be the third conference which will finalize a series of amendments to three conventions which are designed to coordinate requirements and intervals for survey and certification which are contained in the basic conventions. This effort had its genesis in the recommendations of the 1978 Conference on Tanker Safety and Pollution Prevention. A meeting of the Shipping Coordinating Committee held in 1986 provided an overview of the proposals at that time. These proposals have not substantially changed. The agenda for the Shipping Coordinating Committee meetings is as follows:

1. 56th session of the Maritime Safety Committee.

a. Requirements for safety of Roll on/Roll off passenger vessels.

b. Discussion of requirements for traditional passenger vessels.

c. Review of the status of implementation of the Measures for the Prevention of Unlawful Acts Against Passengers and Crew Aboard Ship.

2. Discussion of the Conference on the Global Maritime Distress and Safety System/(GMDSS).

3. Discussion of the Conference on Harmonization of Survey and Certification Requirements.(HSSC).

Members of the public may attend up to the seating capacity of the room.

For further information, contact Mr. G.P. Yoest, U.S. Coast Guard Headquarters (G-CPI), 2100 Second Street, SW., Washinton DC 20593. Tel: (202) 267-2280.

Date: September 21, 1988.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88-22747 Filed 10-3-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Minority Business Resource Center Advisory Committee; Public Forum

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held Thursday, November 3, 1988, at 6:00 p.m. at the Holiday Inn-Golden Gateway, The Gold Rush Room, 1500 Van Ness Avenue, San Francisco, CA 94109. The agenda for the meeting is as follows:

—DOT Short-term Lending & Bonding Assistance Programs

—Urban Mass Transportation Administration-Bay Area Projects: An Update

—Federal Highway Administration/CALTRANS-Bay Area Projects: An Update

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Mrs. Marie A. Hendricks, Office of Small and Disadvantaged Business Utilization, 400 7th Street, SW., Washingtn, DC 20590, telephone (202) 366-1930. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on September 28, 1988.

Eunice S. Thomas,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 88-22838 Filed 10-3-88; 8: 45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petitions

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381, 1410a).

On September 3, 1987, Mr. Robert L. Dewey, of the Center for Auto Safety, asked the agency to conduct an investigation and order a recall regarding spontaneous side door glass shattering on 1985 ½ model Ford Escort and Mercury Lynx vehicles.

The petitioner cited a Ford document that estimated the window shattering occurrence rate could be 500 per 100,000 vehicles. In a letter dated March 25, 1988, Ford explains that the document in question reflects an estimate based on the number of glass mechanism malfunctions. This is not an estimate of glass breakage. The agency's review of this matter indicates a glass breakage

rate of about 12 per 100,000 vehicles. The side door glass rests in a metal bracket or "C" channel. The assembly is raised or lowered by a cranking mechanism. In the event the window regulator mechanism is overcranked or overtorqued, the metal bracket could come in contact with the glass and cause the tempered surface to be broken, causing the entire glass to shatter into small round edged pieces as prescribed by FMVSS 205 to minimize injury to occupants should the glass temper be broken for any reason.

Ford introduced on or about July 24, 1985, a production change which added tape to the bottom edge of the glass to prevent direct contact of the glass with the bracket. Another change introduced for the 1986 model provided for a different glass bottom edge profile to prevent any potential contact between the glass and the bracket. Ford has subsequently removed all of the earlier glass in stock and replaced it with the newer designed glass with the scalloped bottom edge. These implemented changes probably account for the actual occurrence rates being much lower than the estimates cited by the petitioner.

The agency's review of this matter indicated very low actual occurrence, accident and injury rates.

The information received by NHTSA including the very low number of complaints is not sufficient to pursue an investigation. There does not appear to be a reasonable possibility that an order concerning the notification, correction, and remedy of defect in the subject vehicles would be issued at the conclusion of an investigation.

Issued on September 29, 1988.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 88-22767 Filed 10-3-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 88-60]

Conditional Approval of a Commercial Gauger; Intercoastal Inspection Co.

AGENCY: Customs Service, Treasury.

ACTION: Notice of Conditional Approval of a Commercial Gauger.

SUMMARY: Intercoastal Inspection Co. of Corpus Christi, Texas, applies to Customs for approval to gauge imported petroleum and petroleum products and organic chemicals and vegetable and animal oils in bulk and in liquid form under §151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Intercoastal meets the requirements for conditional approval.

Therfore, in accordance with §151.13(c), Intercoastal Inspection Co., 4506 Corona, P.O. Box 270324, Corpus Christi, Texas 78427-0324, is conditionally approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: September 12, 1988

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2446).

Dated: September 27, 1988.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 88-22787 Filed 10-3-88; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 192
Tuesday, October 4, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Correction of Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice of September 26, 1988 (53 FR 37388) of the special meeting of the Farm Credit Administration Board (Board) scheduled for September 28, 1988. This notice is to revise the exemptions for the closed session of that meeting.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The exemptions for the Wednesday, September 28 special meeting are revised to read as follows:

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(2), (4), (8) and (9).

Dated: September 30, 1988.

David A. Hill,

Secretary, Farm Credit Adminstration Board.

[FR Doc. 88–22918 Filed 9–30–88; 8:45 am]

BILLING CODE 6705–01–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–88–26]

TIME AND DATE: Monday, October 3, 1988 at 9:30 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. FY 90 Budget
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Kenneth Mason,

Secretary.

September 20, 1988.

[FR Doc. 88–22958 Filed 9–30–88; 8:45 am]

BILLING CODE 7020–02–M

Corrections

Federal Register
Vol. 53, No. 192
Tuesday, October 4, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1951

Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Program Regulations

Correction

In rule document 88-20740 beginning on page 35638 in the issue of Wednesday, September 14, 1988, make the following correction:

§ 1951.912 [Corrected]

On page 35736, in the second column, in § 1951.912(a), in the third line, "requested" should read "required".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

7 CFR Part 1610

Loan Policies

Correction

In rule document 88-21637 beginning on page 36782 in the issue of Thursday, September 22, 1988, make the following correction:

§ 1610.10 [Corrected]

On page 36783, in the third column, in § 1610.10(b)(1), in the 10th line, "30-day" should read "30-year".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP88-809-000, et al.]

Texas Eastern Transmission Corp., et al.; Natural Gas Certificate Filings

Correction

In notice document 88-22043 beginning on page 37635 in the issue of Tuesday, September 27, 1988, make the following correction:

On page 37639, in the second column, under **13. Panhandle Eastern Pipe Line Company**, in the first line, the docket number should read "CP88-728-000".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0278]

Boehringer Mannheim Diagnostics Division; Premarket Approval of Enzymun-Test® AFP Immunoenzymetric Assay To Aid in the Management of Testicular Cancer

Correction

In notice document 88-19334 beginning on page 32459 in the issue of Thursday, August 25, 1988, make the following corrections:

1. On page 32459, in the first column, the subject heading was incorrect and should appear as set forth above.

2. On the same page, in the second column, under **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the 6th, 15th and 18th lines, "Enzymun-Test" should read "Enzymun-Test®".

3. On the same page, in the same column, in the same paragraph, the 19th line should read "and ES-600® Immunoassay System.".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations No. 4 and No. 16]

Federal Old-Age, Survivors, and Disability Insurance Benefits; Supplemental Security Income for the Aged, Blind, and Disabled; Continued Payment of Benefits During Appeal

Correction

In rule document 88-17352 beginning on page 29011 in the issue of Tuesday, August 2, 1988, make the following corrections:

1. On page 29012, in the second column, in the third complete paragraph, in the second line, "section of Pub. L. 97-455" should read "section 2 of Pub. L. 97-455".

2. On the same page, in the third column, in the second complete paragraph, in the first line, "regulations of" should read "regulations at"; and in the third and sixth lines, "case" should read "cash".

3. On page 29014, in the third column, in the first complete paragraph, in the 10th line, "of" should read "for".

4. On page 29015, in the first column, in the first complete paragraph, in the 17th line, "regulations" should read "regulation".

5. On the same page, in the same column, in the fourth complete paragraph, the first word should read "If".

6. On the same page, in the third column, in the fourth line from the bottom of the page, "trail" should read "trial".

7. On page 29017, in the second column, in the second complete paragraph, in the seventh line, "limit" was misspelled.

8. On page 29018, in the first column, in the fourth complete paragraph, in the third line from the bottom of the paragraph, "assistance" was misspelled.

9. On the same page, in the third column, in the third complete paragraph, in the first line, "1902(a)(10(A)" should read "1902(a)(10)(A)".

10. On page 29019, in the second column, in the first complete paragraph, in the ninth line, "appeals" should read "appeal".

§ 404.1597 [Corrected]

11. On page 29020, in the second column, in § 404.1597(b), in the second line, "determination," should read "determination),".

§ 404.1597a [Corrected]

12. On page 29021, in the first column, in § 404.1597a(d), in the 14th line, "if" should read "If".

13. On the same page, in the third column, in § 404.1597a(i) introductory text, in the first line, "*when you*" should read "*when your*".

14. On page 29022, in the first column, in § 404.1597a(i) introductory text, in the second line, "you" should read "your".

15. On the same page, in the same column, in § 404.1597a(i)(2), in the 21st line, "benefits" should read "benefit"; and in the 28th line, "witten" should read "written".

16. On the same page, in the third column, in § 404.1597a(i)(6), in the 14th line, "judge" was misspelled.

§ 416.996 [Corrected]

17. On page 29024, in the second column, in § 416.996(e)(1), in the fifth line, "whould" should read "should".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3450

[AA-660-08-4121-02; Circular No. 2611]

Management of Existing Leases; Continuation of Leases—Readjustment of Terms

Correction

In rule document 88-21883 beginning on page 37296 in the issue of Monday, September 26, 1988 make the following correction:

On page 37296, in the third column under **SUMMARY**, in the fourth line "leases"should read "lessees".

BILLING CODE 1505-01-D

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 204

Housing Guaranty Standard Terms and Conditions

Correction

In rule document 88-19861 beginning on page 33805 in the issue of Thursday, September 1, 1988, make the following correction:

§ 204.1 [Corrected]

On page 33805, in the third column, § 204.1(i)(1) should read "Outstanding Investment determined as of the Date of Application,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8226]

Consolidated Return Regulations—Adjustments Reflecting a Restructuring of a Consolidated Group

Correction

In rule document 88-20394 beginning on page 34729 in the issue of Thursday, September 8, 1988, make the following corrections:

1. The CFR title and parts affected should read as set forth above.

2. On page 34731, in the first column, in the fourth complete paragraph, in the 12th line, after "profits" insert "that are not reflected in the earnings and profits".

§ 1.1503-31T [Corrected]

3. On page 34732, in the third column, in § 1.1503-31T(a)(3)(vii), in the second line "illustrate" should read "illustrates".

BILLING CODE 1505-01-D

federal register

Tuesday
October 4, 1988

Part II

Department of Education

34 CFR Parts 219 and 222

Assistance for School Expenditures and Construction; Final Regulations

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 219 and 222

Assistance for School Expenditures and Construction in Cases of Certain Disasters and Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the regulations governing the Impact Aid disaster assistance program (section 7 of Pub. L. 81–874 and section 16 of Pub. L. 81–815) and the Impact Aid maintenance and operations assistance program (sections 2, 3, and 4 of Pub. L. 81–874). These final regulations implement technical amendments made to Pub. L. 81–874 and Pub. L. 81–815 by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297. Some of the provisions of these regulations affect the amounts of school district's payments.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hansen, Director, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2107, Washington, DC 20202–6272. Telephone: (202) 732–4655.

SUPPLEMENTARY INFORMATION:

Background

Regulations governing the Impact Aid disaster assistance and maintenance and operations assistance programs are found at 34 CFR Parts 219 and 222, respectively. On April 28, 1988, the President signed into law the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297, containing certain amendments to Pub. L. 81–874 and Pub. L. 81–815. A number of these amendments were technical in nature. The final regulations in this document implement the changes made by the technical amendments in Pub. L. 100–297, where necessary.

Effect of Reauthorization

Pub. L. 100–297 extends the authorization for Pub. L. 81–874 and Pub. L. 81–815 through fiscal year (FY) 1992. Under Pub. L. 100–351, enacted June 27, 1988, the Impact Aid provisions of Pub. L. 100–297 generally are effective beginning with FY 1989 funds.

Sections Requiring Changes as a Result of Pub. L. 100–297

Technical changes made to regulatory sections as a result of Pub. L. 100–297 are described below. In addition, other minor editorial and technical revisions are made.

1. *Section 219.2 Eligible parties.*

Paragraph (a) is amended to implement those portions of sections 2017 and 2033 of Pub. L. 100–297 that remove the authority for "pinpoint disaster" assistance under section 7 of Pub. L. 81–874 and section 16(a)(1) of Pub. L. 81–815, respectively.

Paragraph (b) is amended to implement those portions of sections 2017 and 2033 of Pub. L. 100–297 that change the eligibility threshold for assistance due to Presidentially declared disasters under section 7 of Pub. L. 81–874 and section 16(a)(5) of Pub. L. 81–815 to the lesser of $10,000 or five percent of the applicant's current operating expenses for the fiscal year preceding the fiscal year in which the disaster occurred.

2. *Section 219.4 Definitions.*

The definition of "pinpoint disaster" is deleted from this section to implement those portions of sections 2017 and 2033 of Pub. L. 100–297 that remove the authority for "pinpoint disaster" assistance under section 7 of Pub. L. 81–874 and section 16(a)(1) of Pub. L. 81–815, respectively.

3. *Section 219.21 Application procedure.*

Paragraph (b) is amended to implement those portions of sections 2017 and 2033 of Pub. L. 100–297 that remove the authority for "pinpoint disaster" assistance under section 7 of Pub. L. 81–874 and section 16(a)(1) of Pub. L. 81–815, respectively.

4. *Section 219.22 State certification of applications.*

Paragraph (b) is deleted from this section to implement those portions of sections 2017 and 2033 of Pub. L. 100–297 that remove the authority for "pinpoint disaster" assistance under section 7 of Pub. L. 81–874 and section 16(a)(1) of Pub. L. 81–815, respectively.

5. *Section 222.3 Definitions.*

The definition of "Applicant" is amended to implement section 2016 of Pub. L. 100–297, which permits a local educational agency (LEA) receiving funds under section 3 of Pub. L. 81–874 to also receive funds under section 6 of that law.

The definition of "Current expenditures" is amended to implement section 2021 of Pub. L. 100–297, which excludes from the definition of that term expenditures made from funds granted under Chapters 1 and 2 of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3801–3876).

6. *Section 222.26 Reduction of financial assistance under sections 2, 3, and 4 due to insufficient appropriations.*

Section 222.26 is deleted because section 2015 of Pub. L. 100–297 contains a new formula for allocation of grant funds under sections 2, 3, and 4 in the case of insufficient appropriations.

7. *Section 222.37 Determination of compensation for unusual geographical factors.*

Paragraph (a) is amended to implement that portion of section 2014 of Pub. L. 100–297 that requires (rather than authorizes) the Secretary to make payments to any LEA that qualifies for a supplementary payment under section 3(d)(3)(B)(ii) of Pub. L. 81–874.

Paragraph (c)(2) implements that portion of section 2014 of Pub. L. 100–297 that clarifies that the supplementary payment for LEAs with unusual geographical factors shall not exceed the per pupil share, computed with regard to all children in average daily attendance, of the increased current expenditures necessitated by the unusual geographical factors times the number of federally connected students in the LEA.

8. *Section 222.61 Treatment of State aid programs in general.*

Paragraphs (a)(2) and (b) are amended to implement that portion of section 2015 of Pub. L. 100–297 that prohibits equalized states qualifying under section 5(d)(2) of Pub. L. 81–874 from considering the special supplements under Pub. L. 81–874 for handicapped children and children with specific learning disabilities (section 3(d)(2)(C)), children residing on Indian land (section 3(d)(2)(D)), heavily-impacted LEAs (section 3(d)(2)(B)), and LEAs with unusual geographical factors (section 3(d)(3)(B)(ii)), in determining State aid.

9. *Section 222.92 How is an LEA's section 2 maximum entitlement determined?*

Paragraph (b) is amended to implement section 2013 of Pub. L. 100–297, which requires the Secretary to compute an LEA's maximum entitlement under section 2 of Pub. L. 81–874 by multiplying the LEA's full current levied

real property tax rate by the annually determined aggregate current estimated assessed value for the eligible Federal property in the school district.

10. *Section 222.100 How is an LEA's section 2 maximum entitlement computed?*

Section 222.100 is deleted to implement section 2013 of Pub. L. 100–297, which requires the Secretary to compute an LEA's maximum entitlement under section 2 of Pub. L. 81–874 by multiplying the LEA's full current levied real property tax rate by the annually determined aggregate current estimated assessed value for the eligible Federal property in the school district.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Because these regulations merely incorporate statutory changes, and make minor editorial and technical revisions, however, public comment could have no effect. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

This regulation has been reviewed in accordance with Executive Order 12291. It is not classified as major because it does not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary has determined that these final regulations will not have the type of effect on a sufficient number of small entities that would require analysis under the Regulatory Flexibility Act. These amendments merely conform the existing regulations to new statutory requirements, and make other minor editorial and technical revisions.

Paperwork Reduction Act of 1980

These amendments do not contain any information collection requirements under the provisions of the Paperwork Reduction Act of 1980.

List of Subjects in 34 CFR Parts 219 and 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing, Reports and recordkeeping requirements.

Dated: September 28, 1988.

Linus Wright,

Acting Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84–041, School Assistance in Federally Affected Areas—Maintenance and Operations.)

The Secretary amends Parts 219 and 222 of Title 34 of the Code of Federal Regulations as follows:

PART 219—ASSISTANCE FOR SCHOOL EXPENDITURES AND CONSTRUCTION IN CASES OF CERTAIN DISASTERS

1. The authority citation for Part 219 is revised to read as follows:

Authority: 20 U.S.C. 241–1 and 646, unless otherwise noted.

§ 219.2 [Amended]

2. Section 219.2 is amended by removing paragraph (a)(2), redesignating paragraph (a)(1) as paragraph (a), removing "; or" at the end of redesignated paragraph (a) and adding, in its place, a period, removing "$1,000" in paragraph (b)(1) and adding, in its place, "$10,000", and removing the words "One-half of one" in paragraph (b)(2), and adding, in their place, the word "Five".

§ 219.4 [Amended]

3. Section 219.4(c) is amended by removing the definition of "Pinpoint disaster" and the authority citation following this definition.

4. Section 219.21 is amended by revising paragraph (b) to read as follows:

§ 219.21 Application procedure.

* * * * *

(b) *State certification: Closing date for filing.* The LEA shall submit its application to the SEA. The LEA shall ensure that the SEA certifies and transmits this material to the Secretary on or before a date 90 days after the date of publication of a notice in the **Federal Register** that the President has declared a major disaster.

* * * * *

§ 219.22 [Amended]

5. Section 219.22 is amended by removing paragraph (b) and removing the paragraph designation and italicized heading "(a) *For major disasters."* in paragraph (a).

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

6. The authority citation for Part 222 continues to read as follows:

Authority: 20 U.S.C. 236–241–1, and 242–244, unless otherwise noted.

§ 222.3 [Amended]

7. In § 222.3, the definition of "Applicant" is amended by removing the words "but does not include departments or agencies proposing arrangements under section 6 of Act", and the definition of "Current expenditures" is amended by removing the words "Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) (20 U.S.C. 3801–3808, 3871–3876)", and adding, in their place, "Chapters 1 and 2 of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3801–3876)".

§ 222.26 [Removed]

8. Section 222.26 is removed.

9. Section 222.37 is amended by revising paragraph (a), redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, adding a new paragraph (b), and revising redesignated paragraph (c) to read as follows:

§ 222.37 Determination of compensation for unusual geographical factors.

(a) An applicant LEA is eligible for an increased local contribution rate under this section if that LEA is unable to provide a level of education equivalent to that provided by the generally comparable LEAs on which the applicant's local contribution rate is based because—

(1) The applicant's current expenditures are affected by unusual geographical factors; and

(2) As a result, those current expenditures are not reasonably comparable to the current expenditures of the generally comparable LEAs.

(b) The Secretary determines whether an applicant LEA meets the eligibility criteria in paragraph (a) of this section based upon the data provided by the applicant under paragraph (d) of this section.

(c) If the Secretary determines that an applicant LEA meets the eligibility criteria in paragraph (a) of this section, the Secretary increases the applicant's local contribution rate as follows:

(1) Except as provided in paragraph (c)(2) of this section, the Secretary increases the applicant LEA's local contribution rate up to the amount the Secretary determines will compensate the applicant for the increase in its current expenditures necessitated by the unusual geographical factors, but no more than is necessary to allow the applicant to provide a level of education equivalent to that provided by its generally comparable LEAs.

(2) The amount of the increased payment referred to in paragraph (c)(1) of this section may not exceed the per pupil share (computed with regard to all children in average daily attendance), as determined by the Secretary, of the increased current expenditures necessitated by the unusual geographical factors referred to in paragraph (a)(1) of this section.

* * * * *

10. In § 222.61, paragraph (a)(2) introductory text is amended by adding the words "(except the increase in payments described in sections 3(d)(2)(B), 3(d)(2)(C), 3(d)(2)(D), and 3(d)(3)(B)(ii) of the Act)" before the word "may", paragraph (b)(1) is revised, paragraph (b)(2) is redesignated as paragraph (b)(1)(iii), and paragraph (b)(3) is redesignated as paragraph (b)(2) to read as follows:

§ 222.61 Treatment of State aid programs in general.

* * * * *

(b) *General rules.* (1) A State may take into consideration payments under the Act in allocating State aid if that State has a program of State aid that qualifies under § 222.62, except as follows:

(i) Those payments may be taken into consideration for each affected local educational agency only in the proportion described in § 222.66.

(ii) A State may not take into consideration increases in payment under the following sections of the Act:

(A) Section 3(d)(2)(B) (increase for heavily impacted local educational agencies).

(B) Section 3(d)(2)(C) (increase for handicapped children and children with specific learning disabilities).

(C) Section 3(d)(2)(D) (increase for children residing on Indian lands).

(D) Section 3(d)(3)(B)(ii) (increase for unusual geographical factors).

* * * * *

11. Section 222.98 is amended by revising paragraph (b) to read as follows:

§ 222.98 How is an LEA's section 2 maximum entitlement determined?

* * * * *

(b) The Secretary then computes the LEA's section 2 maximum entitlement by multiplying the total estimated current assessed value referred to in paragraph (a) of this section by—

(1) For fiscally independent LEAs, the current local real property tax rate for school purposes levied by the LEA; and

(2) For fiscally dependent LEAs, the current local real property tax rate for school purposes imputed for the LEA in accordance with paragraph (1)(ii) of the definition of "Local real property tax rate for school (elementary and secondary education current expenditure) purposes" in § 222.3.

(Authority: 20 U.S.C. 237(a))

§ 222.100 [Removed]

12. Section 222.100 is removed.

[FR Doc 88-22654 Filed 10-3-88; 8:45 am]
BILLING CODE 4000-01-M

federal register

Tuesday
October 4, 1988

Part III

Environmental Protection Agency

Tributyltin Antifoulants; Notice of Intent to Cancel; Denial of Applications for Registration; Partial Conclusion of Special Review

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/49B; FRL 3458-7]

Tributyltin Antifoulants; Notice of Intent to Cancel; Denial of Applications for Registration; Partial Conclusion of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of partial conclusion of the special review; notice of intent to cancel; notice of intent to deny applications for registration.

SUMMARY: On October 7, 1987 (52 FR 37510), EPA proposed to cancel the registrations of certain tributyltin (TBT) products and deny the applications of others unless the registrants modified certain terms and conditions of registration. This Notice partly concludes the Special Review and announces EPA's final decision to cancel registrations and deny applications of all pesticide products containing tributyltin (TBT) compounds as active ingredients (a.i.) for use as antifoulants unless the registrations/applications comply with the specific terms and conditions of registration as provided herein. This action is based on the Agency's determination that the use of TBT products without such modified terms and conditions of registration will result in unreasonable adverse effects on the environment.

The Agency is keeping the Special Review open on the issue of release rate. The Organotin Antifouling Paint Control Act (OAPCA) which was signed into law on June 16, 1988, established an interim release rate restriction and certification program for TBT antifoulant paints. These interim provisions will expire when the Agency's final determination regarding the release of organotin into the aquatic environment by antifouling paints becomes effective. As noted herein, such action has not been taken in this Notice, and thus the interim provisions of OAPCA remain in effect.

DATE: A request for a hearing by a registrant or applicant must be received by November 3, 1988, or 30 days from receipt by mail of this Notice, whichever is the later applicable deadline. A request for a hearing from any other adversely affected person must be received by November 3, 1988.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

Rebecca S. Cool, Special Review and Reregistration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7453).

SUPPLEMENTARY INFORMATION: This Notice is organized into 11 units. Unit I is an introduction providing background information concerning this cancellation action and the provisions and implications of the Organotin Antifouling Paint Control Act of 1988 (OAPCA). Unit II summarizes the risks associated with the use of tributyltin (TBT) antifouling paints. Unit III provides a discussion of TBT release rate testing and results. Unit IV summarizes the benefits associated with the use of TBT antifouling paints. Comments received from interested parties on specific risk, release rate, or benefits issues are also discussed in these units. Unit V discusses the comments of the Scientific Advisory Panel, the Secretary of Agriculture, and other public comments on the regulatory actions previously proposed by EPA in its Notice of Preliminary Determination of October 7, 1987. Unit VI describes the Agency's risk and benefit conclusions. Unit VII describes future Agency activities regarding tributyltin antifouling paints. Unit VIII describes the Agency's regulatory decision as well as existing stocks and disposal provisions. Unit IX describes the procedures which will be followed in implementing the regulatory actions EPA is announcing in this Notice, including the procedures for amending registrations of applications, for requesting a hearing, and the consequences of requesting or failing to request a hearing. Unit X describes the public docket established for the Tributyltin Antifouling Paint Special Review. Unit XI lists references used in this Notice.

I. Introduction

A. The Notice of Special Review and the Preliminary Notice of Intent To Cancel

There are nine TBT compounds registered for use as antifoulants. These are: bis(tributyltin) adipate, bis(tributyltin) dodecenyl succinate, bis(tributyltin) oxide, bis(tributyltin) sulfide, tributyltin acetate, tributyltin acrylate, tributyltin fluoride, tributyltin methacrylate, and tributyltin resinate.

TBT compounds are registered for use in paint formulations as antifoulants on vessel hulls and other marine structures to inhibit the growth of certain aquatic organisms such as barnacles and algae which cause fouling. The major use of TBT paints is on ship and boat hulls with less than four percent of the use on docks, buoys, crab pots, fish nets, etc. Approximately 624,000 gallons of TBT antifouling paint, using approximately 1 million pounds of TBT compounds, are sold annually. When the TBT Special Review was initiated in 1986, there were a total of 61 registrants with 364 registered TBT antifouling paints and 20 formulating intermediate or manufacturing use products.

On January 8, 1986, EPA issued a Notice of Special Review on certain pesticide products containing any of the nine tributyltin (TBT) compounds which were registered as antifoulants (51 FR 778), following a finding that TBT met or exceeded the risk criteria in 40 CFR 162.11(a)(3)(i)(B) and (ii)(C), which were in effect at that time. Subsequently, the risk criteria in 40 CFR 162.11 were superseded by new criteria set forth in 40 CFR 154.7(a)(3). EPA has determined that TBT compounds used in antifouling paints exceed both the old and the new risk criteria for exposure of nontarget aquatic organisms to concentrations which are acutely or chronically toxic to such organisms.

The TBT Special Review was initiated on the basis of bioassay and laboratory toxicity studies which indicated that TBT compounds are highly toxic, frequently at the parts per trillion (ppt) level, to nontarget marine and fresh water aquatic organisms. The Agency noted that TBT residue concentrations reported at sites in U.S. coastal waters exceeded the levels reported to have caused adverse effects in the laboratory studies.

At the initiation of the TBT Special Review, the Agency determined that it needed certain additional data for use in characterizing the toxicity, exposure, and benefits of TBT antifouling paints. EPA, using its authority under section 3(c)(2)(B) of FIFRA, issued a Data Call-In Notice (DCI) on July 29, 1986, to all registrants of TBT antifouling paints and the producers of the TBT active ingredients. The DCI required product chemistry data, ecological effects data, environmental fate data, TBT paint release rate data, worker exposure data, quantitative usage and application data, and efficacy data. Additional ecological effects and worker exposure data are due into the Agency in 1 to 4 years and environmental fate data are due in 1 to 2 years. The other data have already been submitted to the Agency. Registrants failing to submit required data have had their registrations suspended.

Based on public comments received in response to the **Federal Register** Notice, the data submitted to the Agency in response to the DCI, and on additional analyses performed since the initiation of the TBT Special Review, the Agency on October 7, 1987, made a preliminary determination to propose (1) cancellation of TBT antifouling paint products with short term cumulative release (first 14 days of release rate test) exceeding 168 micrograms (μg) of organotin (calculated as TBT cation) per square centimeter (cm^2) or average daily release rates (averaged over weeks 3 to 5 of release rate test) exceeding 4 μg of organotin (calculated as TBT cation)/cm^2/day; (2) prohibition of use of TBT antifouling paints on non-aluminum hulled vessels less than 65 feet in length; (3) classification of TBT antifouling paints as restricted use pesticides and restriction of their sale to certified commercial applicators and their use by persons under the direct supervision of an on-site certified commercial applicator, and (4) compliance with certain requirements pertaining to removal and disposal of old paint prior to application of new paints, and/or application of new TBT paints. Also, at this time, the Agency issued the Tributyltin Technical Support Document dated September 30, 1987, which, along with accompanying scientific reviews, comprise the technical documents in support of the Agency's preliminary determination.

Subsequently, the Congress passed the Organotin Antifouling Paint Control Act of 1988 ("OAPCA") which was signed into law on June 16, 1988, by the President. It contains both interim and permanent TBT use restrictions which are further described in Unit 1.C. of this document. The Act established an interim release rate restriction and certification program for TBT antifoulant paints which will expire when the Agency's final determination regarding the release of organotin into the aquatic environment becomes effective. Among other things, the Act also establishes a permanent provision prohibiting application of TBT antifoulant paints to non-aluminum vessels under 25 meters (82 feet) in length.

EPA has evaluated the issues raised in the preliminary documents listed in Unit 1.A. of this document in light of the newly enacted legislation and comments and additional data received during the Special Review process. In summary, EPA is announcing that it will cancel all TBT antifouling paint registrations which (a) do not comply with OAPCA's average daily release rate of 4.0 ug organotin/cm2/day; (b) do not comply with OAPCA's prohibition of the use of TBT antifouling paints on all non-aluminum vessels under 82 feet (or 25 meters) in length (on deck); (c) are not classified as restricted use pesticides, restricting their sale to certified commercial applicators and their use to persons under the direct supervision of an on-site certified commercial applicator (except for products which are packaged in 16 ounce or less spray-can containers and are labeled for use only on outboard motors, propellers, and other non-hull underwater aluminum components), (d) do not have required labeling which requires compliance with applicable OSHA regulations and with the directions for work practices for application, removal, and disposal of TBT paints to reduce the introduction of TBT paint wastes into the aquatic environment, and (e) do not limit certain uses for some types of products.

This Notice announces the Agency's intention to cancel registrations and deny application for registration of all antifouling paint products containing TBT compounds, unless the terms and conditions of registration are amended as described in Unit VIII.B of this document. This action is based on the Agency's determination that the use of TBT antifouling paints will result in unreasonable adverse effects to nontarget aquatic organisms unless the required measures are adopted. A detailed discussion of the basis of this action is contained in the Notice of Preliminary Determination and the Tributyltin Technical Support Document.

B. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration, section 3(c)(5) of FIFRA. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment." The term "unreasonable adverse effects on the environment" is defined under FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with widespread and commonly recognized practice.

The burden of proving that a pesticide satisfies the standard for registration rests on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration of a pesticide or require modification of the terms and conditions of registration whenever it is determined that the pesticide causes unreasonable adverse effects on the environment.

The Special Review process, formerly called the Rebuttable Presumption Against Registration (RPAR), is a mechanism by which EPA collects information on the risks and benefits associated with the uses of pesticides to determine whether any use causes unreasonable adverse effects to human health or the environment. The Special Review Process is currently governed by 40 CFR Part 154 and was further described in the Notice of Preliminary Determination.

In determining whether the use of a pesticide poses risk which are greater than the benefits of use, EPA considers both possible changes to the terms and conditions of registration which can reduce risks, as well as the impacts of such modifications on the benefits of use. If EPA determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require such changes be made in the terms and conditions of registration.

Alternatively, EPA may determine that no changes in the terms and conditions of a registration will adequately ensure that use of the pesticide will not pose any unreasonable adverse effects. In that event, the Administrator may issue a Notice of Intent to Cancel the registration or may hold a hearing to determine whether it should be cancelled under FIFRA section 6(b). In determining whether to issue such a Notice, the Administrator must take into account the impact of the action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. In the case of TBT, the impact of the action on the marine paint and shipbuilding industry and the user community was considered. At least 60 days before formally issuing such a Notice, the Administrator must inform the Secretary of Agriculture in writing of the substance of the proposed actions and supply the Secretary with an analysis of the expected impact on the agricultural economy. At the same time, under FIFRA section 25(d), the Administrator is required to submit the proposal to the Scientific Advisory Panel for comment as to the impact on

health and the environment of the action proposed in the cancellation notice. EPA is also required by law, where appropriate, to consult with the U.S. Department of the Interior to see if the proposed action may affect an endangered species.

Unless expedited procedures are employed, EPA informs the public of its proposals to issue cancellation notices so that registrants and other interested persons can also comment or provide relevant information before a final Notice of Intent to Cancel is issued. Registrants and other interested persons are invited to review the data upon which the proposal is based and to submit data and information to address whether EPA's initial determination of risk was in error. In addition to evidence relating to risks, comments may include evidence as to whether any economic, social, and environmental benefits of use of the pesticide outweigh the risks of use.

If, after reviewing the comments received, EPA decides to issue a Notice of Intent to Cancel, any adversely affected person may request a hearing to challenge the action. In the hearing, any party opposing cancellation would have an opportunity to present evidence. Other interested parties could intervene to present evidence. At the end of the hearing EPA would decide on the basis of the evidence presented whether or not to cancel or restrict the registration of pesticide products. If no hearing is requested, each registration would be cancelled by operation of law 30 days after receipt by the registrant or publication in the **Federal Register** of the Final Notice, whichever occurs later.

C. The Organotin Antifouling Paint Control Act of 1988

The Organotin Antifouling Paint Control Act of 1988 ("OAPCA") (Pub. L. 100–333) was signed by the President on June 16, 1988. It is free-standing legislation that is independent of FIFRA. It has interim and permanent TBT use restrictions as well as provisions regarding sale and use of existing stocks, environmental monitoring, research on alternatives, reports to Congress, and penalties for non-compliance. All of the provisions were effective upon the date of enactment. The interim provisions pertaining to the release rate restriction and certification of TBT antifoulant paints will expire when the Agency's final regulatory decision regarding the release of organotin into the aquatic environment by antifouling paints becomes effective. As noted herein, such action has not been taken in this Notice, and thus the interim provisions of OAPCA remain in effect.

OAPCA establishes a certification program under which only products which do not exceed a release rate of 4 μg of organotin/cm2/day can be sold and used. OAPCA requires EPA to review all release rate data submitted to the Agency before the new law was enacted and to determine which products meet this release rate standard by September 14, 1988. For any release rate data submitted after June 16, 1988, EPA is required to make a decision regarding product certification within 90 days of receipt of such data.

OAPCA also establishes maximum existing stocks provisions, starting from the date of enactment, of 180 days for sale, and 1 year for use, for all organotin antifouling paints and organotin additives in existence on the date of enactment. OAPCA provides that the Administrator shall, no later than 90 days from enactment, provide reasonable times for sale and use of existing stocks which do not exceed the above noted limits. Any organotin antifouling paints certified as meeting the 4 μg release rate restriction will not be subject to these sales or use limits after notice of certification.

OAPCA also contains the following *permanent provisions.*

1. *Vessel size.* Subject to the existing stocks provision, all TBT products are prohibited from use on vessels that are less than 25 meters (82 feet), unless the vessels are aluminum. Outboard motors and lower drive units are also exempt from the prohibition.

2. *Paint additive products.* Subject to the existing stocks provision, all retail sale, distribution, purchase, and receipt is prohibited for TBT additives used to create antifouling paints. No such products are currently registered.

3. *Estuarine monitoring.* EPA, in consultation with the Department of Commerce, for the next 10 years, must conduct monitoring studies of TBT concentrations in water, sediment, and aquatic organisms from representative areas in the United States. The Agency must submit annual reports of the results of the monitoring studies to Congress (House of Representatives and Senate).

4. *Navy monitoring and testing.* The Navy must conduct similar environmental monitoring studies in naval ports serving TBT-treated vessels, continue laboratory toxicity and environmental risk studies, and report annually to each state with a naval port and to EPA for inclusion in the Agency's annual report to Congress.

5. *State assistance.* EPA must assist states, to the extent practicable, in monitoring and analyzing for TBT in waters in the states.

6. *Effectiveness report.* EPA, in 5 years, must report to Congress on the effectiveness of the TBT restrictions, compliance with the organotin water quality criteria document, and recommendations for additional protective measures.

7. *Antifoulant alternatives research.* EPA and the Navy must conduct research on chemical and nonchemical alternatives to organotin paints and, in 4 years, must report to Congress the results of such research.

8. *Water quality criteria.* EPA must issue a final water quality criteria document for organotin, pursuant to section 304(a) of the Clean Water Act, by March 30, 1989.

9. *Penalties.* Civil (not to exceed $5,000) and criminal (not to exceed $25,000) penalties will be imposed for violating the above use, sale, distribution, purchase and receipt provisions.

TBT registrants were notified of OAPCA and its provisions by an Agency letter dated August 12, 1988. Data necessary to make the OAPCA certification of release rates were required to be submitted by a July 29, 1986, Data Call-in Notice for Tributyltins Used in Paint Antifoulants and a follow-up Notice of August 13, 1987, both of which were issued under the authority of section 3(c)(2)(B) of FIFRA. All submissions of data required by these notices were determined to be inadequate because of the use of inappropriate testing procedures or the absence of critical data. The letter dated August 12, 1988, specified additional raw data and/or information that were necessary for the Agency to validate the release rate studies and required submission of such data/information within 30 days of the registrant's receipt of the letter. Registrants were informed that failure to submit adequate data might result in their receipt of a Notice of Intent to Suspend and would prevent the Agency from reaching a decision on their product's release rate and certification under OAPCA.

In a letter dated September 14, 1988, the Agency notified registrants by letter that none of their release rate data were certified under OAPCA and that the following existing stocks provisions were in effect until they were able to satisfy OAPCA's certification requirements:

1. December 16, 1988, for sale, delivery, purchase, and receipt;

2. June 16, 1989 for use.

II. Determinations on Risk

Laboratory testing and field trials have established that TBT is toxic to fish (at 0.2 parts per billion (ppb)), bivalves (at 0.02 to 0.05 ppb), gastropods (at 0.05 ppb), crustaceans (at 0.14 to 0.19 ppb), and algae (at 0.1 to 0.35 ppb). TBT concentrations at or above 0.02 ppb have been reported for at least 30 sites in the United States, predominantly in areas with heavy boating and shipping activity.

Harbors and boating activity are usually concentrated in relatively shallow (<30 ft) coastal waters. These areas also coincide with many estuaries or ecologically dynamic environments that support large fisheries and are important nursery areas. Although TBT distribution in the environment is not completely understood, a biologically significant amount has been observed to be accumulated by aquatic organisms at all taxonomic levels. Documented effects of TBT have been found in shell deformities of the commercially important oyster, *Crassostrea gigas* (in France, England, and the United States), and in sexual deformities and possible population declines of the marine snail, *Nucella lapillus* (in the United States and England).

A. Toxicity to Nontarget Aquatic Organisms

The full extent of the risks of TBT to nontarget aquatic organisms is unknown at this time. While observable effects under field conditions have not been determined for many aquatic species, TBT toxicity studies have been conducted on algae, fish, crustaceans, and molluscs (both bivalves and gastropods). Although short-term studies have demonstrated that TBT is highly toxic to certain aquatic organisms (LC_{50}=0.1 to 24 ppb), long-term studies have revealed toxic effects from TBT concentrations that are one to two orders of magnitude lower (> 0.02 ppb). Most aquatic organisms appear to be extremely sensitive to TBT toxicity during the time of development from fertilized eggs through various larval stages. In addition to developmental effects, the sublethal toxic effects of TBT may be sufficient to gradually alter aquatic populations by changing their size or composition (individual year class strength), metabolism (TBT is a membrane effector), behavior (competition abilities, defense mechanisms, feeding strategies), and/or by deteriorating the environmental conditions through physical, chemical, or biotic factors.

The Agency's Office of Water is required to issue its Ambient Water Quality Criteria for Tributyltin by March 30, 1989 under OAPCA. The document will be a guideline to EPA Regional Offices suggesting the maximum TBT residue concentrations which the Agency believes will protect fresh and salt water organisms. The values in the Criteria Document may be changed subsequently depending upon new scientific data made available to the Agency. Additional aquatic toxicity data have been required of TBT registrants; these data are due to be submitted to the Agency over the next few years. However, there are sufficient laboratory and field data to indicate that certain harbor and estuarine areas have TBT residues above levels which may be safe to certain aquatic organisms.

1. *Fish.* Acute toxicity to both fresh and marine fish species have been reported with values ranging from 1.5 ppb to 24 ppb. TBT compounds have been widely used in the salmon aquaculture industry to retard fouling of net pens. However, researchers at the Alaskan National Marine Fisheries Service have observed, on several occasions, high mortalities in groups of Chinook salmon (*Oncorhynchus tshawytscha*) after transfer to marine net pens newly treated with TBT.

Chronic exposure of fish to TBT has resulted in physiological alterations in growth rate and in histological damage to rainbow trout (*Salmo gairdneri*) at concentrations as low as 0.2 ppb TBT. Chronic TBT exposure may affect fish fecundity or progeny survival. Exposure of parental sheepshead minnows (*Cyprinodon variegatus*) to TBT has been found to result in significant mortality of progeny that were not directly exposed to the toxicant.

Bioaccumulation (accumulation in the body of an organism at concentrations higher than in surrounding water) of TBT has been reported for sheepshead minnow where an equilibrium was not reached during a 58-day test period. With exposures of 0.96 to 2.07 ppb, residues were as high as 4.19 ppb in the whole body. When transferred to clean water, depuration (loss of the toxicant from the organism) was rapid for the first 7 days, but slowed over the next 21 days. Chinook salmon were also reported to bioaccumulate TBT by a factor 200 to 4300 times greater than the TBT concentration in the water column.

2. *Bivalves.* Larval stages are more sensitive to TBT than adults. Acute toxicity to bivalve larvae (48-hour LC_{50}) has been reported to be 0.9 ppb for Pacific oyster larvae (*Crassostrea gigas*) and 2.3 ppb for mussel larvae (*Mytilus edulis*).

Chronic effects of TBT exposure are reported to cause growth retardation at 0.02 to 0.05 ppb in European oysters (*Ostrea edulis*) and clams (*Venerupis decussata*), shell deformities at 0.02 ppb in the Pacific oyster (*C. gigas*), and reproductive aberrations (predominance of males in the hermaphroditic European oyster) at 0.24 ppb.

Bivalves rapidly accumulate TBT in lipid-rich tissue, especially gonadal tissue. Bioaccumulation factors of two thousand to twenty thousandfold for Pacific oyster and a thousandfold to fifteen hundredfold for European oyster have been recorded. Unlike fish, bivalves do not readily metabolize this toxicant and the resulting effect is slow depuration of TBT.

3. *Gastropods.* Marine snails (specifically *Nassarius obsoletus* and *Nucella lapillus*) are reported to develop a condition termed "imposex" as a result of TBT exposure. Imposex is the superimposition of male characteristics (penis and vas deferens) on female organisms. In the extreme, imposex impacts gastropod reproduction. A direct relationship between TBT exposure and the development of imposex has been demonstrated in the laboratory at exposure levels of 0.05 ppb TBT for 120 days and corroborated in the field. A high frequency of imposex has been observed in areas with heavy boating and shipping activities and high levels of TBT in the water column. Imposex is infrequent in more pristine areas.

4. *Crustaceans.* Acute toxicity of TBT to tested crustacean species ranges from 0.42 ppb for a 96-hour LC_{50} for juvenile mysid shrimp (*Acanthomysis sculpta*) to 41 ppb for a 96-hour LC_{50} for adult shrimp (*Crangon crangon*).

The sublethal chronic effects of TBT to crustaceans have involved growth retardation in mysid shrimp (0.25 ppb), delayed metamorphosis in mysid shrimp (10 to 20 ppb), delayed limb regeneration in fiddler crabs (*Uca pugilator*) (0.5 ppb), reproductive effects in adult female mysid shrimp (0.14 to 0.19 ppb), and behavioral changes in daphnids (*Daphnia magna*) (0.5 ppb).

5. *Algae.* A limited number of marine diatoms and fresh water algae have been examined for toxic effects from TBT compounds. In laboratory studies, an EC_{50} (the environmental concentration at which 50 percent of the population is effected) for growth inhibition of the marine diatoms *Skeletonema costatum* and *Thalassiosira pseudonana* was observed after 75 hours exposure at 0.33 ppb and 1.33 ppb, respectively. Growth reduction was reported for *S. costatum*,

Pavlova lutheri, and *Dunaliella tertiolecta* at 0.1 ppb and death at 5 ppb after 2 days.

6. *Registrants' comments on aquatic toxicity issues.* In response to the Agency's Preliminary Determination and the TBT Technical Support Document, registrants and other parties submitted specific comments concerning the Agency's interpretation of data it used in assessing the toxicity of TBT to non-target aquatic organisms. These comments and EPA's detailed evaluations are included in the public docket (OPP–30000/49A), and are available for inspection as noted at the beginning of this Notice under "ADDRESS". Below is a summary of the principal issue regarding aquatic toxicity from TBT raised by the commenters.

The Agency based a portion of its hazard assessment on chronic effects of TBT to non-target aquatic organisms. One registrant argued that the shell thickening effect noted in the Pacific oyster (*C. gigas*) may be caused by other environmental factors, including other chemical contaminants and high turbidity, rather than TBT. The Agency has reviewed the published literature regarding this issue and maintains its conclusion that data from both field and laboratory studies appear to support a finding that TBT is the causative factor. Other environmental pollutants have been determined to be unlikely causes. Over 200 xenobiotics, including diesel fuel, aromatic hydrocarbons, copper, and zinc, were not found to cause the shell thickening effect (Refs. 1, 2, 3, and 4). Likewise, particulate matter, once believed to be associated with the effect, was subsequently discounted as a likely cause because further studies demonstrated that the particulate matter was contaminated with TBT (Ref. 1). TBT levels of 0.15 and 1.6 μg/L, which were similar to those measured in areas of England where affected species were observed, had a propensity to cause shell deformities in *C. gigas* with or without particulate matter present while particulate matter alone did not cause the shell thickening effect (Ref. 2). These findings have been further confirmed in field studies (Ref. 5).

B. Comparative Toxicities of Tributyltin, Triphenyltin, and Copper

Copper based antifouling paints are the major alternative to TBT paints. Although copper can be highly toxic to aquatic organisms, it appears to be less toxic than TBT by one to three orders of magnitude. Copper toxicity and bioavailability are reduced in the marine environment because the toxic unit, the free cupric ion, is adsorbed by and forms complexes with organic and inorganic ligands.

Also, triphenyltin (TPT) could be used as a substitute antifouling compound in paints. The Agency has a limited set of data on TPT (based on nominal concentrations) which indicates that TPT causes chronic effects in fish at 2.0 ppb and effects in crustaceans at ≥0.27 ppb. TBT effect levels for these organisms are ≥0.2 ppb and 0.09 ppb, respectively. The Agency issued a DCI on TPT antifoulant uses on August 26, 1987 which required ecological effects data along with other data. Protocols for some of the required studies have been submitted and are being reviewed by the Agency. The information obtained from this DCI will be useful to the Agency in assessing the risks of TPT to nontarget aquatic organisms.

C. International Reports of TBT Contamination and Population Effects

1. *France.* In France, a correlation has been found between TBT residue levels in certain estuaries and gross malformations in Pacific oysters (*C. gigas*) grown in commercial oyster beds in and adjacent to areas of heavy boating activity. These deformities are characterized by the perturbation of the calcification mechanism. Abnormal shells are thickened and have numerous chambers filled with a jelly-like substance consisting of high levels of the amino acid threonine, and a smaller amount of the amino acids serine, glycine, and aspartic acid as compared to normal oysters.

Environmental concentrations of organotin in the water column were measured (as Sn) at 0.2 to 0.3 ppb in Arcachon Bay during 1982 and appeared to have caused shell deformities in 70 to 100 percent of the 2-year old oysters. Following a ban on TBT antifouling paints on vessels less than 25 meters (82 feet) in length, the degree of shell deformities has decreased and the regeneration rate of juvenile oysters (spat) has improved.

2. *England.* A recent study found that environmental concentrations of 0.02 ppb TBT in the Crouch estuary resulted in oyster shell deformities similar to those found in France. This finding was corroborated in the laboratory. A reproductive abnormality (imposex) has been observed in the dogwelk snail (*Nucella lapillus*) and may be responsible for the possible decline of this once abundant population. Researchers established that this reproductive anomaly can occur in certain species of marine snails when TBT tissue concentrations exceed 0.1 ppb. Laboratory testing demonstrated that tissue levels of 1.65 ppb have been found to induce imposex after snails were exposed to 0.05 ppb TBT for four months.

3. *Canada.* In Canada, organotin residues have been found in several freshwater locations including lakes, rivers, and harbors. Several sample stations had TBT levels (0.22 to 5.0 ppb) that were comparable to the chronic level (>0.2 ppb) associated with growth retardation in rainbow trout larvae. High levels of TBT residues at these sample stations were associated with heavy boating or shipping activity.

4. *United States.* Reports on the effects of TBT on aquatic populations in the United States have been limited because the environmental impact of tin-based antifoulant paints has only been studied for a few years. However, from the information that is available, it appears that adverse effects to nontarget aquatic organisms may have occurred. Insufficient data are available to define the full extent of the problem.

The Department of Fish and Wildlife of Oregon recently found shell deformities in oysters from Coos Bay, and have attributed these abnormalities to TBT residues from paint chips coming from a nearby shipyard. Researchers at California Department of Fish and Game demonstrated that oysters (*C. gigas*) and mussels (*M. edulis* and *M. californianus*) transplanted along a known gradient of TBT concentrations in San Diego Bay exhibited shell thickening and growth effects similar to laboratory and field findings documented in France and England. A recent monitoring program indicates that TBT levels are sufficiently elevated and persistent in several major bays and harbors in California to cause the shell deformities observed in *C. gigas* (Ref. 6). Imposex in female mud snails has been reported in the United States along the East Coast and in California in close proximity to yacht harbors and marinas. In marinas and areas of high boating activity of the southern Chesapeake Bay, TBT concentrations are reported to be at 0.014 to 0.1 ppb, levels that laboratory tests indicate cause reproductive effects in molluscs.

D. Endangered Species

There are approximately 90 endangered species in fresh water lakes and streams and in marine estuaries of the United States There are no available organotin toxicity data for these species; however, EPA has asked the Fish and Wildlife Service, Department of Interior and the Marine and Estuaries Fisheries Service in the Department of Commerce to determine if organotin compounds

would jeopardize any endangered species.

E. Exposure

1. *Environmental fate.* The environmental fate of tributyltin in estuaries is complex and not completely understood. Studies indicate that photolysis and microbial action are potential mechanisms of degradation from tri- to di- to monobutyltin and finally to inorganic tin. Studies indicate the half-life of TBT may be 116 days in aerobic soils, 815 days in anaerobic soils, 6 to 12 days in seawater, and up to 238 days in fresh water. TBT is readily sorbed to soils and sediments. Sedimentwater partition coefficients of 3000 and 700 *ug*/kg/*ug*/L have been reported for suspended particulate loadings of 10 and 100,000 mg/L, respectively. Thus, newly deposited sediments might be expected to have TBT residue concentrations 3000 times greater than the ambient water column concentration when the suspended particulate concentration was 10 mg/L in the water column. As the concentration of suspended particulates in the water column increased, the difference between the ambient water column TBT concentration and the sediment TBT concentration would decrease. Data from monitoring studies have consistently indicated that TBT and its di- and monobutyltin degradates concentrate in bottom sediments. Sediment-bound residues contain a higher ratio of the degradates than that found in the water column. The means of TBT deposition in sediments and the relative strength of TBT adsorption versus desorption of the degradates are not known. The overall partitioning of TBT among water, biota, sediment, surface microlayer, and atmosphere has not been fully investigated.

2. *Bioavailability.* TBT residues accumulate in sediment at levels that are one to four orders of magnitude greater than the total concentration of TBT residues measured in the water column. This amassing of toxicant may have serious consequences for organisms 1iving and feeding in the benthos (bottom of the body of water). For example, it has been found in laboratory experiments and field trials that TBT contaminated sediment can affect growth in Pacific oyster (*C. gigas*) at 0.15 ppb. In addition, the results of a laboratory study suggest that mud crabs (*Rhithro-panopeus harrissi*) accumulate TBT from food as well as water exposure.

In estuarine environments, 95 percent of the particulatebound TBT may be associated with bacterial cell walls (dead and alive cells). The adsorption of TBT to bacteria is a significant exposure component that may affect aquatic organisms that feed on detritus (organic matter) and suspended particulate. These organisms include species of polychaetes, snails, amphipods, sponges, bivalve molluscs, and arthropods.

3. *Environmental monitoring.* Monitoring studies have been carried out to determine the extent of TBT contamination in the water column of marine and fresh waters. Sampling was designed to compare levels of contamination in areas of varying boating activity (recreational and commercial). The seasonal, tidal, and spatial flux of TBT and its degradates were examined in some cases. Limited analyses of sediment and aquatic biota also have been performed.

TBT levels in tested areas of the Chesapeake Bay and San Diego Bay ranged from ND (nondetectable, meaning below the level of detection for the analytical method used) to 0.8 ppb and ND to 1 ppb, respectively. Other reported water column concentrations were: San Francisco Bay ND to 0.16 ppb, Honolulu Harbor 0.045 to 0.27 ppb, Los Angeles/Long Beach Harbor ND to 0.12 ppb, Narragansett Bay, Rhode Island, ND to 0.13 ppb, Thames River, Connecticut, ND to 0.009 ppb, and Mayport, Florida ND to 0.016 ppb. Fresh water samples from 265 locations across Canada were analyzed for TBT. In 10 percent of the water samples, TBT was found at levels >0.2 ppb. Consistently, TBT concentrations were highest in areas of heavy boating activity. A monitoring study in the Chesapeake Bay during the summer of 1986 showed a strong correlation between boat density and observed TBT concentrations in four harbors.

TBT concentrations have been shown to vary seasonally. In areas of moderate to high TBT loading, the water column levels of TBT appear to correlate to seasonal boating activity and boat maintenance activities. Seasonal variation in temperature may also influence the leaching of TBT from paints and/or the mobility and persistence of TBT in the marine environment.

Tidal exchange, dispersion, and convection are the most important factors affecting short-term changes in TBT concentration. Sites with fresh water influx areas or recirculating currents generally have very low concentrations of TBT. In areas where water residence times are relatively long, TBT levels increase in proportion to the loading. Accumulation of TBT degradates has been observed in locations where water movement is very slow (e.g., southern end of San Diego Bay).

4. *Environmental modeling.* The Agency is engaged in an effort to model Norfolk Harbor in Virginia. Norfolk Harbor is a major fishery with large populations of hard clams and Eastern oyster and is a nursery for spot, Altantic crocker, Atlantic menhaden, stripped bass, black sea bass, and summer flounder. The area is also an active boating and shipping area with recreational, commercial, and military use and contains large and small boat/shipyards. The Agency model will examine environmental concentrations under several loading levels and attempt to estimate the impact of possible regulatory approaches on TBT concentrations. The information may be useful to the Agency in making future regulatory decisions.

5. *Registrants' comments on exposure issues.* Registrants and other interested parties submitted many specific comments concerning the Agency's interpretation of data used in evaluating the exposure of non-target aquatic organisms to TBT. These comments and EPA's detailed evaluation are available for inspection in the public docket. There were five major exposure issues raised by the registrants. They were degradation, bioavailability, bioaccumulation, environmental concentrations, and environmental loading. The Agency's responses are summarized below.

a. *Degradation.* A registrant commented that factors such as hydrolysis, photolysis, dissipation, and other degradation pathways were not factored into the Agency's calculations regarding exposure. The registrant stated that calculation of exposure should be based on recently generated data such as that reported by Dr. Richard Lee (Ref. 7) which indicated that the half-life of TBT in water may be less than one week, depending on the concentration of algae.

Response: The Agency has evaluated and considered all of the available information regarding physical and biological degradation of TBT, including the study by Dr. Lee which was not available to the Agency at the time of the Preliminary Determination.

TBT can be degraded through photolysis. However, because of the limited penetration of sunlight into an aquatic environment, this pathway is not expected to significantly affect TBT concentrations.

Hydrolysis is not a viable degradation consideration since TBT is relatively

stable in water with a degradation half-life of 1 to 3 years (Ref. 8).

The overall partitioning of TBT among water, biota, sediment, surface microlayer, and atmosphere has not been experimentally investigated although inferences may be drawn about relative partitioning from analysis of available monitoring data discussed in Unit II.E.4. of this document.

Biodegradation of TBT by algae was first suggested by the work done by Maguire *et al.* (Ref. 9). They concluded that the freshwater green algae *Ankistrodemus falcatus* could degrade TBT to dibutyltin resulting in a half-life of 25 days. However, the authors note that these estimates should be viewed with caution, since the reaction was not followed to completion.

Lee *et al.* (Ref. 7) found that at a TBT concentration of 1.5 ppb under laboratory conditions with a very high phytoplankton population (*Skeletonema costatum*), TBT was degraded with a half-life of 4 to 9 days. This information was interesting; however, insufficient data were given in the study to confirm the results. The results of this study appear to be contradicted by Walsh *et al.* (Ref. 10) who used the same species of algae and calculated an EC_{50} for growth inhibition of 0.33 ppb TBT. Lee *et al.* (Ref. 7), as well as Walsh *et al.* (Ref. 10), found low or no degradation of TBT by cultures of dinoflagellates, green algae and chrysophytes. Although the diatom used by Lee *et al.* (Ref. 7) may degrade TBT under certain optimal conditions, their presence in the water column is cyclic and appears to be dominant in temperate water during the Spring.

The effectiveness of algae degradation of TBT is a function of temperature, species, population density, and the nutritional state of TBT tolerant algae. Therefore, it is difficult to assess whether algal degradation of TBT would be a significant pathway in the environment. However, bacterial biodegradation is a strong possibility. Several researchers have concluded that certain bacteria have this capability (Refs. 6, 7, 11, 12, and 13).

b. *Bioavailability.* A registrant commented that EPA incorrectly assumes that particulate and sediment-bound TBT is potentially 100 percent bioavailable. The registrant contends that the bioavailability of sediment-bound TBT is limited.

Response: The Agency has never assumed that particulate and sediment-bound TBT were potentially 100 percent bioavailable. The Agency has concluded that the available data indicate that the level of TBT bioavailability is affected by suspended particulate, bottom sediments, and dissolved organics. However, the Agency believes that the available data are insufficient to completely assess the impact of sediment-bound TBT to aquatic organisms. Organotin bioassays required by the Agency's Data Call-In Notice of July 29, 1986 are designed to address this.

The registrant cites data published by Salazar and Salazar (Ref. 14) to support their contention that no adverse effects occur in bottom organisms exposed to TBT bound sediments. The Agency evaluated this study and found it to be limited and incomplete. The 10- to 20-day solid phase (sediment) test used mysid shrimp, clams, and polychaete worms. Supplemental feeding of the mysid shrimp and polychaete worms limited the usefulness of the test which was to determine whether organisms that ingest TBT-laden sediment are affected. The authors do acknowledge that the clams (filter feeders) did accumulate significantly more tin (2.82 ppm) than controls (0.26 ppb). In fact, they conclude that "these values . . . demonstrate that the organotins associated with sediment are bio-available." The static test of the suspended particulate phase showed no significant mortality because: (1) The test organisms (shrimp and sandcrabs) are not filter-feeding organisms that would normally ingest the particulate-bound TBT, and (2) the test organisms (except fish) were given a supplemental uncontaminated diet.

c. *Bioaccumulation.* A registrant commented that he does not believe that lethal levels of TBT will bioaccumulate in an organism exposed to low environmental concentrations because all organisms will depurate their TBT body burden, and environmental levels of TBT are not maintained for long periods.

Response: The Agency is not only concerned with lethal concentrations from bioaccumulation; sublethal levels of bioaccumulation which may lead to effects short of death also are of concern to the Agency. The risk from TBT bioaccumulation cannot be dismissed. Body burdens in various aquatic organisms (i.e. fish, bivalves, algae, and bacteria) are not totally depurated. The Agency has relied upon the work of several researchers in establishing that TBT accumulation occurs in fish, bivalves, gastropods, algae, bacteria, and crustaceans (Refs. 4, 15, 16). An interpretation of the toxicity data suggests that two poisoning mechanisms may be occurring. At high TBT concentrations, gill-breathing organisms may be affected by rapid suffocation resulting from destruction of gill epithelium. However, at low concentrations, organisms that do not efficiently depurate or metabolize TBT may accumulate levels that will inhibit main metabolic pathways. Either one of these mechanisms could result in lethal or sublethal effects. In regard to environmental levels, several researchers have found that, while peaks in TBT environmental concentrations occur in some areas (e.g., areas where there is a Spring launching of recreational boats), a relatively significant level of TBT is maintained for 6 to 7 months in temperate areas and may be even more extensive in warmer climates where boating activity is less affected by seasonal changes. Waldock and Miller (Ref. 4) found that TBT residues were still found in *C. gigas* tissue during the winter months when boating activity had ceased and most pleasure craft had been removed from the Crouch estuary. This suggests that *C. gigas* was either still being exposed to environmental residues of TBT or depuration was very slow.

d. *Environmental concentrations.* A registrant stated that he does not believe that residues of TBT in the environment will equal or exceed levels which produce adverse effects in nontarget organisms.

Response: The Agency has cited incidents from Europe where TBT has been implicated in causing adverse effects to aquatic organisms. In fact, it is because of these occurrences that regulatory actions have been initiated in France and England. Concern was first expressed in France where severe deformities were found in the commercially cultivated Pacific oyster (*C. gigas*) in areas where there was intense boating activity and relatively poor water exchange. The affected oysters were found to contain high concentrations of tin although scientists at the time could not distinguish between the inorganic and organic forms. These high levels of tin coincided with the increasing use of organotin compounds (especially TBT) as biocidal agents in antifouling paint. The French government responded by banning the use of organotin paints on boats under 25 meters in 1982. Similar problems were subsequently noted in the United Kingdom and resulted in legislation to control the total concentration of tin in antifouling paints. U.S. researchers noted several incidents of shell deformities in oysters transplanted to various California harbors and bays, that were known to contain elevated levels of TBT. These findings in California were consistent with those observed in the UK and France.

e. *Environmental loading.* A registrant maintained that TBT environmental concentrations are correlated with marina maintenance activities and not with leaching from boat hulls.

Response: Although some data on TBT environmental levels can be attributed to paint chip contamination from improper disposal, there are examples of high levels that can be attributed exclusively to boat paint leaching. Seligman *et al.* (Ref. 17), sampling at Shelter Island Yacht Basin, San Diego, found near surface concentrations of TBT (0.027 to 0.235 *ug*/1) that were significantly higher than near bottom concentrations. The large difference in vertical distribution was accredited to the TBT leaching from hulls in the upper 1 to 2 meters of the water column with relatively little mixing below that level. According to Stephenson (Ref. 18), marina maintenance activities are not occurring at the Shelter Island Yacht Basin. However, if paint chip contamination was occurring, it is expected that high levels of TBT would be found much further down the water column, due to the density of the paint chips.

The Agency has developed a model for examining environmental concentrations of TBT in the Norfolk, Virginia, area with regard to various TBT loading levels. One set of studies simulated the continuous long-term release of TBT paints by boat hulls. At a release rate of 1 $ug/cm^2/day$, it was projected that TBT leaching from boat hulls would be comparable to levels found in the Norfolk area. These results lend support to the Agency's position that TBT leaching from boat hulls is a primary source of TBT contamination.

F. Risk Assessment Summary

The risk assessment contained herein is a summary of the risk assessment contained in the the Technical Support Document of the Preliminary Determination. Laboratory and field studies have demonstrated that low concentrations of TBT can cause irreversible chronic effects to a broad spectrum of nontarget aquatic organisms. At laboratory and field concentrations of approximately 0.02 to 0.05 ppb, TBT has caused shell deformities and a reduction in growth in commercially important bivalves and imposex in ecologically significant gastropods. Monitoring studies which are further discussed in the Technical Support Document have demonstrated that TBT is persistent in the marine environment and that the observed levels of TBT in the water column in and adjacent to marinas, dry dock areas, and poorly flushed harbors exceed concentrations that have been demonstrated to cause adverse effects in molluscs, gastropods, and other nontarget aquatic organisms. Also, it is believed that biologically significant levels of TBT may be transported to nearby sensitive ecologically productive areas because of movement of TBT residues via currents and tides. The Agency also is concerned about the potential accumulation of TBT in aquatic sediments and in the tissue of aquatic organisms; however, insufficient data are available to determine the extent and significance of these events.

III. Release Rates Assessment

In the Preliminary Determination of October 7, 1987, the Agency proposed restricting the release rate of TBT antifoulant paints as a means of reducing one source of environmental loading: leaching of TBT from painted hull surfaces and other surfaces such as docks and crab pots. The proposed release rate restrictions were based on EPA's preliminary analysis of release rate studies conducted according to the ASTM/EPA TBT release rate method. This method was intended to give a relative ranking of the potential for TBT release from product to product under a set of specified conditions. It was not intended to produce comparable results to any other method or to quantitate environmental loading. The Agency received numerous comments in response to the Preliminary Determination pertaining to the Agency's analysis of the release rate data, the variability of the data, and possible improvements to the method. The Agency's response to these comments and decision regarding the use of these data are set forth in this unit. A detailed analysis of specific comments is available in the public docket.

A. Background

Release rate data were originally submitted to the Agency in response to the Tributyltin Data Call-In issued July 29, 1986. This notice required all registrants of TBT antifouling paints to measure TBT release from registered paints following a test method developed in cooperation with the American Society for Testing and Materials (ASTM). In addition, each laboratory conducting the TBT release rate test was required to test a standard copolymer test paint as a means of assuring that the test method was consistent among testing facilities. The Notice did not specifically require submission of raw data or any detailed information regarding how the study was conducted. As a result, registrants submitted summaries of their release rate data.

Release rate data for the standard test paint varied substantially between testing facilities. It was assumed that this variation was due to systematic error. All data were reviewed by the Agency and a value of 90 $\mu g/cm^2$ was assigned to the short term cumulative release rate (cumulative for the first 14 days of the test) and a value of 5 $\mu g/cm^2/day$ was assigned to the average daily release rate (average of weeks 3 to 5 of the test) for the standard test paint. Each laboratory's standard test paint data were normalized to these assigned values. The normalization factor obtained for each laboratory was utilized to adjust the release rate data for all paints tested at that laboratory. This adjustment was deemed necessary to fairly compare release rate results from all laboratories. Release rate data were reviewed for the 96 TBT antifouling paint products for which data were submitted prior to the PD–2/3. It was determined that at least 57 of the tests were tentatively acceptable. The other 39 tests were determined to be unacceptable because of scientifically invalid testing procedures.

Prior to the issuance of the Preliminary Determination, the Agency issued a follow-up notice on August 13, 1987, informing the registrants who submitted the 57 tests that their previous data submissions were only tentatively accepted and a complete submission of release rate data was required within 30 days. This information was needed in order to: (1) Verify that the studies were conducted in compliance with the ASTM/EPA standard test, (2) evaluate the scientific validity of the studies, and (3) determine whether the registrants correctly calculated TBT release rates and cumulative release values from the raw data. Additional letters were sent to specific registrants, when appropriate, to inform them of TBT release rate studies that were unacceptable due to scientifically invalid testing.

Subsequent to these notices, most registrants of antifoulant paints submitted additional information on their earlier release rate submissions in an attempt to comply with the August 13, 1987 Notice. New TBT release rate data have been submitted for some of the products on which the initial testing was unsatisfactory or that were not previously tested.

The Agency has completed its review of all submitted release rate data including a review of the TBT release from the EPA standard test paints. Attempts to comply with the August 13, 1987 Notice varied substantially and all

submissions are currently deficient. Many submissions did not include raw data (instrument readings), adequate information on instrument calibration, or sufficient data on blanks and controls. The descriptions of leaching and analytical methodologies were incomplete. Information needed to demonstrate that proper environmental controls (pH, temperature, and salinity) were maintained were not included in most submissions. In some cases, samples were stored beyond the period specified by the ASTM/EPA method; however, storage stability data were not submitted.

At this time no release rate studies have been validated. Registrants were informed in an Agency letter dated August 12, 1988, that additional data/information were required to be submitted before any decisions regarding specific release rates can be made.

In addition to the above deficiencies, many of the submitted studies did not adhere to the ASTM/EPA method specification that the TBT concentration in the measuring tank not exceed 50 ppb. This restriction was imposed to eliminate the possibility of autoinhibition of TBT release from the paint film. EPA and the ASTM committee suspect that the 50 ppb restriction may be too conservative. Testing is being initiated at EPA's Environmental Chemistry Laboratory (ECL) in Bay St. Louis, Mississippi, to determine the true autoinhibitory threshold.

After the ECL test results are available and the registrants respond to the above Notice, the Agency will reevaluate each study. If it is determined that the measuring tank concentration did not exceed the true autoinhibitory threshold and if the Agency finds that the registrant has supplied the additional data/information necessary to validate his submission, the Agency will use the study for regulatory purposes.

B. Release Rate Restriction

The proposed restrictions in the Preliminary Determination specified that no TBT antifouling paint could be sold or distributed which exceeds the short-term cumulative release (cumulative release over the first 14 days of the ASTM/EPA test) of 168 μg TBT (includes tributyltin and triphenyltin)/cm^2 or an average daily release rate (average over weeks 3 through 5) of 4.0 μg TBT/cm^2/day. The proposed short-term cumulative release restriction was indexed to the average release rate restriction (3 × the average release rate over 14 days).

The short-term cumulative release was intended to reflect the initial surge of TBT release when a freshly painted vessel is first placed in the water. It was calculated by summing the time weighted release for each sampling over the first 14 days of the test. The time weighted release was calculated by multiplying the rate of TBT release for a given sampling time by the preceding length of time between sampling times. The average release rate reflects the long-term TBT release pattern that is established after the initial surge. It is defined as a simple average of the release rates measured over a certain number of weeks.

In the Preliminary Determination, release rate values were normalized to adjust for variation between testing facilities and the average daily release rate was defined as the mean of individual release rates over weeks 3 through 5. The Agency received numerous comments from TBT registrants and the FIFRA Scientific Advisory Panel regarding this analysis of the release rate data. Most commenters felt that the proposed release rate restrictions should be adjusted to account for the variability of the test method but that normalization was not an appropriate means of accounting for variability.

The standard test paint data were the only data common to all registrants and as such were used to evaluate the variability of the ASTM/EPA release rate method. Additional standard test paint data and information on testing procedures from individual testing facilities submitted after the Preliminary Determination was issued, were included in the Agency's analysis of the method's variability. It was not possible to establish that variation among testing facilities was attributable to systematic error, as was previously assumed. Variation associated with testing facilities is now assumed to represent a component of method variance. Normalization is not appropriate under these circumstances, and the Agency agrees that release rate data should not be normalized. The available data could not be analyzed by standard statistical procedures because sampling was unbalanced (a wide variation in the number of samples per laboratory). The Agency could only perform a qualitative analysis of the method's variability. It was determined that most of the variability was associated with testing among different laboratories and sampling over time within a given test. Variation between replicate cylinders and between replicate runs was low by comparison.

The Agency has determined that, due to the incomplete nature of the release rate data submissions and the uncertainty over autoinhibition, it would be inappropriate at this time to try to quantify the variability associated with the EPA/ASTM method. The Agency is unable to determine whether the high variance of the results is attributable solely to the inherent variablity of the method or to possible improper conduct of the release rate studies. It would also be inappropriate to determine a release rate restriction which attempts to account for this variability based solely on the current data base.

For the present the Agency is keeping the Special Review open on the issue of release rates and is deferring to the interim release rate restriction (4 μg/cm^2/day) and certification program established by OAPCA. Products will be certified on the basis of the average daily release rate calculated from validated release rate studies conducted according to the current draft ASTM/EPA method. Any new release rate data submission or resubmission (such as those required by the Agency's August 12, 1988 letter) will be reviewed and a determination regarding certification reached within 90 days of the Agency's receipt of such data.

The average daily release rate will now be calculated as the non-normalized mean of all release rate measurements during weeks 3 through 10. In the Preliminary Determination the average daily release rate was defined as the average of release rates measured over weeks 3 through 5. However, examination of the standard paint release rate data indicated that individual release rate measurements made during week 6 and beyond were equivalent to those made during weeks 3 through 5. Release rate measurements beyond 10 weeks may be required for paints with atypical patterns of TBT release over time. The additional measurements included in the calculation of the average release rate are expected to increase accuracy.

The Agency will consider release rate levels again when additional environmental monitoring data are available and the release rate method is improved. The Agency has already identified certain procedures within the method as potential sources of variability and has initiated experimentation to determine how the release rate method can be improved. This testing is further discussed in Unit VII. When the research is completed, the Agency may decide to replace the current OAPCA release rate restriction

with a restriction derived from the improved method.

C. Results

Release rate data for 109 currently registered TBT antifoulant paint products have been submitted to the Agency. Additional data have been required for 94 of these products. Data submissions covering 15 paints have been invalidated because the testing facility used inappropriate testing procedures. One specification in the protocol is temporarily deferred pending the results of EPA laboratory testing. This exception is the acceptance of data where the concentration of TBT in the measuring tank sea water exceeds 50 ppb. This concentration was exceeded for 42 of the 94 paint products.

Of the 94 paints for which release rate data were submitted, 58 have estimated release rates which tentatively meet OAPCA's average daily release rate restriction of 4.0 $\mu g/cm^2$/day. These products may be certified under OAPCA provided the registrants of these products submit adequate data as required by the Agency's letter of August 12, 1988, which will allow the Agency to validate the registrant's study. Table I characterizes the number of paints that would meet OAPCA's release rate restriction.

TABLE I—NUMBER OF PAINTS THAT TENTATIVELY MEET OAPCA'S RELEASE RATE RESTRICTION OF 4.0 $\mu G/CM^2$/DAY

Types of paints	With copper	Without copper
Free association paints	32	7
Copolymer paints with freely associated TBT	12	3
Copolymer paints	2	2

IV. Determination of Benefits

The following discussion of benefits includes consideration of the impacts of both OAPCA's requirements and the additional requirements imposed by this Notice. The OAPCA requirements, for which benefits impacts have been reviewed, include the vessel length and release rate restrictions. This Notice adds the restricted use classification requirement and requires labeling relating to OAPCA's requirements and those of this Notice. Under FIFRA the Agency must weigh the impacts on benefits of the risk-related requirements imposed pursuant to FIFRA. The Agency is not required to consider, other than as part of the already existing benefits situation, the impacts of requirements imposed pursuant to other legislative authority, such as OAPCA or OSHA, in a FIFRA-mandated risk/benefit weighing.

The benefits of TBT antifouling paints were analyzed for the boat and shipyard industry and three user groups: recreational, commercial, and military. As explained in the Technical Support Document of the Preliminary Determination, analysis was performed for three possible regulatory options: (1) Total ban of TBT antifouling paints, (2) restriction of TBT paints by release rate, and (3) restriction by release rate, size of vessel, and classification as a restricted use pesticide. The benefits of other regulatory options discussed in the Technical Support Document were not analyzed because it was determined that they were not feasible options to reduce the risks from TBT exposure to nontarget aquatic organisms.

Comparisons were made for TBT copolymer/ablative, TBT free association, copper conventional, and copper ablative paint systems. For each user group and each paint system, the impact of regulation was determined by subtracting the cost of hull maintenance using a particular paint system from the operational benefits gained from that system (i.e., fuel efficiency, increased time between dry dockings). The different paint systems were then compared for each user group. Hull preparation costs are lower when ablative paints are used because vessel operators can achieve extended dry docking intervals. The longer a vessel can stay in service between dry dockings or hull cleanings, the less expensive a vessel is to operate. On-ship trials conducted by the U.S. Navy indicate that organotin co-polymer/ablative paints would enable vessels to operate on a 5- to 7- year dry docking schedule.

The major, currently available alternatives to TBT antifouling paints are copper compounds, chiefly cuprous oxide. There are copper ablatives which, like TBT copolymer/ablatives, do not require hull cleaning or frequent dry docking. There are currently only three registered copper ablative paints. More testing is needed to determine if they can give the 5 to 7 years of service noted for certain TBT copolymer/ablative paints. Testing now being conducted indicates copper ablatives give acceptable control of fouling for 3 to 4 years. The conventional copper paints require frequent hull cleanings (every 9 to 18 months) to remove fouling organisms and the layer of insoluble copper compounds that precipitate near the paint surface and block the release of the toxicant. However, there is published research indicating that conventional copper paints may last over 3 years with several hull cleanings. The major disadvantage of copper is that it may cause galvanic corrosion to aluminum vessel hulls. Even with high quality anticorrosive primers, there may be small flaws in the primer coat that could allow copper corrosion to an aluminum hull, especially on vessels with long dry docking intervals.

Commercial vessels use approximately 60 percent of the TBT antifouling paints. For ocean going vessels, long periods between dry dockings and reduced fuel consumption are important considerations. Although many commercial vessels are dry docked and inspected every 2 years, TBT copolymer/ablative paints provide an estimated $318 million per year savings to U.S. commercial vessels over copper conventional paints and an estimated $143 million savings over copper ablative paints.

There are approximately 5 million recreational vessels in the U.S. Most recreational vessels are removed from the water after every use and do not use antifouling paint. However, 14 percent of recreational vessels (700,000 vessels) use some type of antifouling paint containing either copper compounds, tributyltin compounds, or a combination of the two biocides. It is estimated that approximately 60,000 recreational vessels are painted with TBT copolymer/ablative paints, but of these only some 21 percent take advantage of the extended dry docking intervals that can be achieved through use of these paints; the other users tend to paint more frequently than may be necessary. The loss of TBT paints would cost recreational boaters currently using TBT copolymer/ablative paints $0.85 million per year. Recreational vessel owners who currently use free association TBT paints would incur an estimated additional cost of $0.28 million per year over using less expensive copper based paints which will give one to two seasons of protection. Therefore, in terms of antifouling use, there appears to be an economic benefit only to those recreational boat owners who use TBT copolymer/ablative paints and take full advantage of the extended dry docking intervals by not repainting too frequently. Another consideration is that TBT compounds are colorless and offer recreational boat owners more choice of paint colors than copper based paints.

The impact of a total ban of TBT antifouling paints was calculated for the U.S. Coast Guard, Navy Sealift Command, and U.S. Navy, assuming implementation of the proposed Navy fleetwide conversion to organotin

antifouling paints. The estimated average annual net benefit of using TBT copolymer/ablative paints versus copper ablative paints is $35.3 million and $142 million over using conventional copper paints. Estimates for loss of fleet readiness (e.g. time spent in drydock) were not quantified.

The total annual benefits (including commercial and recreational vessels and assuming fleetwide conversion by the Navy) of an estimated $179 million would be lost if all users of TBT paints switched to copper based paints (copper ablatives substituted for TBT copolymer/ablatives and conventional coppers substituted for TBT free association paints). If all users substituted conventional copper paints for all TBT paint use, due to the proven product performance of conventional copper paints over the recently developed copper ablative paints, the loss would be an estimated $460.8 million annually.

The foregone benefit (i.e., additional expense) of using copper ablatives may be reduced if copper ablatives can be shown to have service lives comparable to TBT copolymer/ablative paints. Since it has been shown that existing copper ablative paint formulations have in-service lives of at least 3 years, dry docking on a 3-year schedule was used as an assumption for all copper ablative paint calculations.

There are approximately 6000 boat and shipyards in the United States, 44 percent of which use antifouling paint. Approximately 48 percent of the antifouling paints used by these firms are TBT products; this accounts for about 70 percent of the TBT antifouling paints used in boat/shipyards. U.S. shipyards compete with foreign countries as well as domestically for business. Many U.S. flag (ocean going) vessels are currently docked and painted abroad because foreign labor and materials in this sector are generally less expensive despite a substantial *ad valorem* tax (imposed by the U.S. government) on these services. The regulatory restrictions are likely to have little impact on this practice. The expected cost of the TBT regulation is small in comparison to the *ad valorem* tax currently paid and does not appear to be so excessive that it would cause shipping companies to have more work done abroad. Boat and shipyard serving vessels too small to go abroad may have more business if conventional copper paint systems are used that require frequent hull cleaning and more frequent painting than TBT copolymer/ablative paints.

Under the Agency option to restrict release rates, which is now mandated by OAPCA, there would be TBT paints (both copolymer/ablatives and free association) available for all user groups and for aluminum hulled vessels as well. An initial short supply of acceptable paints is likely and prices may be elevated in the short term until new additional paints with acceptable release rates are registered.

The last option included the following elements: (1) Release rate restrictions, (2) limiting the size of vessel treated; and (3) classifying TBT antifouling paints as restricted use pesticides. The effects on benefits from release rate restrictions and the impact on TBT paint availability was discussed above. In the Preliminary Determination, the Agency argued that restricting the size of vessel to be treated with TBT should have a minor economic impact on users because most non-aluminum hulled vessels under 65 feet in length do not gain an economic benefit from the use of TBT antifouling paints because vessels are painted frequently and there are effective alternatives. The Agency believes this conclusion is still accurate now that the OAPCA 82-foot restriction is in effect. The benefits for vessels between 65 and 82 feet in length are similar because generally they are hauled and repainted every year or two and therefore do not receive the economic benefits from extended drydocking intervals available with TBT copolymer/ablative paints.

Classifying TBT antifouling paints as restricted use pesticides builds upon OAPCA's release rate and vessel length restrictions and provides even further protection. This requirement is expected to cost users an estimated $600,000 the first year and $150,000 in subsequent years in lost revenues while they are undergoing certified applicator training. In addition, there would be an estimated cost of $25,000 to $30,000 incurred by affected states each year to establish and maintain the required training programs. The state of California has already classified TBT antifouling paints as restricted use pesticides, which lessens the cost of design and implementation of a certification and training program incurred by that State as a result of the classification in this Notice. The same would be true for any other states that may on their own classify TBT as a restricted use pesticide. Furthermore, the existence of one or more state certification and training programs may aid the design of additional programs.

The estimated cost of required compliance with the application, removal, and/or disposal directions would vary depending upon vessel size and shipyard capabilities. Qualitatively, based on information submitted by the U.S. Navy (Ref. 19), it appears that a 90 to 95 percent clean-up of drydock surfaces can be attained at minimal cost while an increase to 99% clean-up would add substantially higher costs.

Under section 4(b)(1) of the Occupational Safety and Health Act (OSHA), OSHA may be determined to be preempted if another agency exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health pertaining to working conditions of employees. EPA does not intend, by making TBT antifoulant paints restricted use pesticides or by specifying certain required work practices through this Notice, to preempt or interfere in any way with OSHA requirements pertaining to any activities or facilities where TBT use, removal, or disposal is occurring. This Notice requires label language referring to OSHA requirements, which is designed to avoid any confusion on the matter of preemption. Facilities subject to OSHA requirements, including, but not limited to, regulations on the safety and health of shipyard employees engaged in surface preparation and preservation, must already comply with such standards. The cost impact of label requirements in this Notice requiring general reference to the applicability of OSHA standards, relates only to the cost of including such reference on the label. The cost impact of this Notice does not include the actual costs of compliance with requirements imposed by OSHA.

New technologies for controlling antifouling may be implemented that could reduce the impact of TBT restrictions. For example, the U.S. Navy is testing fluorocarbon coatings that contain no toxicant. The coating surface must be cleaned regularly (once a month in the summer and once every 3 months in the winter). A tug boat painted with the fluorocarbon coating has performed well since 1977 without repainting. Also, the antibiotic terramycin has recently been registered as an additive to antifouling paints; it must be incorporated with paints containing other toxicants and cannot be considered a direct substitute. Control of fouling organisms is an active area of research, especially in the U.S. Navy which conducts testing of promising new compounds for their overall performance. The U.S. Navy along with the Agency will continue to conduct research on chemical and non-chemical alternatives to organotin antifouling paints as required by OAPCA.

In conclusion, it appears that the major benefits from the use of TBT antifouling paints are gained by those vessel owners, mainly commercial, that take advantage of the extended dry docking intervals. Because of the higher costs of TBT paints versus copper paints, most recreational boaters appear to lose money by using TBT paints because they do not take advantage of the extended dry docking intervals. The U.S. Navy claims that the use of TBT paints will provide improved fleet readiness in addition to economic benefits. Copper based paints are the major alternatives to TBT paints and, for some users, the copper ablative paints may prove to be equally. effective. Further research is being conducted on other alternatives.

Comments: Registrants, environmental groups, and government agencies made the following comments on the Agency's benefit assessment in the Preliminary Determination and Technical Support Document.

1. A respondent commented that the Agency should have utilized the same dry docking maintenance schedule for the TBT copolymer and copper ablative antifouling paints (5 years) and the respondent questioned whether there was sufficient data on currently marketed TBT copolymers to predict a 5-year service life.

Response: The Agency utilized dry docking maintenance cycles that are representative of the reported longevity of currently available paint products. The Agency recognizes that the data on copper ablative paints are conservative and that data developed over the next few years may indicate that the dry docking cycles are longer than 3 years; however, currently available efficacy data indicate that a service life of three is reasonable. For TBT copolymer paints, the Agency used data supplied by users and paint companies which suggest a service life of at least 5 years for certain currently marketed TBT copolymer paints.

2. A second respondent stated that conventional copper paint lasting over 3 years with underwater hull cleaning is not a viable alternative because the coating is removed with the cleaning operation.

Response: Cologer and Preiser (Ref. 20) have stated that conventional copper paints combined with periodic underwater hull cleaning may provide up to 5 years of service. According to their data, which used in-service U.S. Navy vessels, conventional copper paints could be cleaned without destroying the paint surface although hull cleaning was needed sooner once the vessel had been cleaned for the first time.

3. A respondent questioned the validity of the assumptions regarding the marginal fuel cost avoidance derived through the use of TBT versus copper ablatives.

Response: The assumptions used were based upon empirical information gathered directly from the user groups. The Agency appreciates that numerous externalities may be involved in fuel consumption: however, it has tried to estimate the fuel cost avoidance directly attributable to the use of TBT antifouling paints.

4. A respondent stated that few facilities actually have adequate TBT controls to prevent contamination of the surrounding environment.

Response: Data available to the Agency, as discussed earlier, indicate that broom sweeping or vacuum sweeping of flat open dry dock surfaces achieves a 90 to 95 percent cleanup of TBT at minimal cost. The Agency is confident that most facilities will be able to secure equipment that will provide 90 to 95 percent cleanup.

V. Comments of the Scientific Advisory Panel, Secretary of Agriculture and Other Parties

As required under sections 6 and 25 of FIFRA, the Agency provided its Preliminary Notice of Determination and Technical Support Document to the Scientific Advisory Panel and the Secretary of Agriculture, respectively, for their comments, which are presented below. This section also includes general comments from other parties which relate to the regulatory measures proposed in the Preliminary Notice of Determination, as opposed to comments on specific risk or benefit issues.

A. Comments of the Scientific Advisory Panel

EPA presented its proposed decision on tributyltin antifoulant paints at a public meeting of the Scientific Advisory Panel held in Arlington, Virginia, on December 15, 1987. The panel issued its response in a written report of December 23, 1987. The Panel's report is reproduced below in its entirety.

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Scientific Advisory Panel

A Set of Scientific Issues Being Considered by the Agency in Connection With the Special Review of Tributyltin

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) haa completed review of the data base supporting the Environmental Protection Agency's (EPA) determination that adverse acute and chronic effects to nontarget aquatic organisms may result from the use of Tributyltin (TBT) compounds as antifoulants unless certain modifications to the terms and conditions of registration are made by the registrant(s). The review was conducted in an open meeting held in Arlington, Virginia, on December 15, 1987. All Panel members, except Drs. Edward Bresnick and Thomas W. Clarkson, were present for the review. In addition, Dr. Robert Huggett, Virginia Institute of Marine Science and Dr. Roy Laughlin, Oceanographic Institution, Incorporated served as *ad hoc* members of the Panel. Public notice of the meeting was published in the **Federal Register** on Monday, November 30, 1987. Oral statements were received from staff of the Environmental Protection Agency and from Dr. David B. Russell, M & T Chemicals; Dr. Alexis I. Kaznoff, Naval Sea Systems Command, U.S. Navy; Mr. Arthur Tracton, Hempel Coatings, Inc. and Mr. David S. Bailey, Environmental Defense Fund. In consideration of all matters brought out during the meeting and careful review of all documents presented by the Agency, the Panel unanimously submits the following report.

Report of Panel Recommendations

Tributyltin (TBT)

The Agency requested the Panel to focus its attention upon a scientific issue relating to the Special Review of Tributyltin.

There follows some comments to the issue and the Panel's response to the issue.

General Comments

The Panel commends the Agency on its conclusion and recommendations relative to the use of tributyltin (TBT) in antifouling paints for hulled vessels. The substance is cleary toxic which is, of course, why it is used as a biocide. Concentrations of TBT in waters which have high boating activity are sometimes high enough to adversely affect non-target organisms.

For instance, laboratory bioassays have demonstrated acute and chronic effects at levels less than 0.2 ppb TBT. Monitoring of whole water, both fresh and salt, from numerous locations around this country has shown that TBT concentrations often exceed LC_{50} values.

Field investigations in Europe and North America have detected several morphological and physiological effects on aquatic organisms which can be induced in the laboratory using TBT as the toxicant. The locations at which the field observations were made demonstrate that organisms living in closer proximity to vessels painted with TBT have a higher probability of being affected.

Tributyltin concentrates in organisms and sediments, and bioaccumulation factors of 200 to 30,000 have been reported depending on the species investigated.

The concentrations of TBT found in sediments may be 10^2 to 10^4 times higher than in the overlying water. TBT may degrade in water and sediments, but relatively high concentrations of TBT in water, sediment and the biota can be expected for some time to come even if the

input of the biocide from vessels were eliminated.

The above information leads the Panel to endorse the Agency's conclusions relative to the potential biological impact of TBT on aquatic organisms.

Issue: The Agency requests the Panel's comments on the Agency's assessment of the environmental effects of TBT based on the integration of available monitoring data with laboratory toxicity data and the use of field effects data from Europe and the United States.

Panel Response: 1. The Panel agrees that available data support the EPA's assessment of hazard to non-target organisms from TBT use.

2. The Panel is concerned that the normalization of data on leaching rates from various registrants may have introduced a degree of uncertainty to the Agency's acceptable release rate.

It is not clear to the panel how the analytical variability has been considered in the establishment of the acceptable leaching rate. The Panel suggests that the Agency carefully reevaluate test methodology for leaching rates.

3. Finally, in view of the potential hazard TBT, its projected use on commercial and military vessels, and its subsequent release from sediments; the Panel suggests that monitoring of TBT in the environment and basic toxicological effects on organisms be continued. In addition, improved information on fate and partitioning of TBTs, especially from sediments and biofilms, should be compiled.

For the Chairman. Certified as an accurate report of Findings: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel. Date: December 23, 1987.

The Agency's response to the release rate issues raised by the SAP's comments is noted in Units III and VII of this Notice. In brief, the Agency is no longer normalizing release rate data and is considering the usefulness of other ways of dealing with variability in its continuing analysis of the release rate methodology. The Agency has initiated experimentation at EPA's Environmental Chemistry Laboratory at Bay St. Louis, Mississippi, to identify sources of error in the current methodology, to design modifications to reduce this error, and to test these modifications. It is anticipated that a final method will be jointly approved by ASTM and EPA by late 1990. In the interim, OPP and ASTM are making minor changes to the draft method which are expected to increase the precision without altering the magnitude of the measured release rates.

In regard to the SAP's last comment, the Agency will require TBT registrants to monitor water quality and environmental health to determine existing TBT levels and the impact of OAPCA's restrictions and the requirements contained herein. Additional environmental fate and aquatic toxicity data required by the July 29, 1986 DCI will be submitted to the Agency within 2 to 4 years. If these or any other data suggest that the risks to aquatic non-target organisms have not been adequately reduced, the Agency may take further regulatory action.

B. Comments of the Secretary of Agriculture

The comments of the U.S. Department of Agriculture in response to the Notice of Preliminary Determination, Draft Notice of Intent to Cancel and the Technical Support Document, dated October 7, 1987, are printed in full below:

Mr. Douglas Campt, Director,
Office of Pesticide Programs (TS–767C), U.S. Environmental Protection Agency, Washington, DC 20460.

Dear Mr. Campt: This is in response to your letter of October 15 concerning the preliminary decision to cancel registration for TBT antifouling paints. The Department interposes no objection to the consummation of this proposal.

Sincerely,

Charles L. Smith,
Coordinator, Pesticides and Pesticide Assessment.

C. Other Comments on the Proposed Regulatory Actions

1. Several respondents commented that aluminum outdrive and engine components should have the same exemption as aluminum hulled vessels and that TBT antifoulant products for such use, commonly 16 ounce pressurized containers, should not be classified as restricted use.

Response: The restriction on vessel length for the use of TBT antifouling paints on non-aluminum hulled vessels was not intended to exclude the use of TBT antifouling paints on aluminum outdrive and engine components as long as these paints meet the release rate requirements. OAPCA, which mandated the vessel length restriction, allows for use of such paints. The Agency believes that TBT antifouling paints which meet the release rate restriction can be used on aluminum outdrive and engine components without resulting in an adverse effect to non-target aquatic organisms.

The Agency agrees that use of small spray cans of 16 ounces or less of TBT antifouling paint registered for use to prevent fouling of outdrives and engine components should not be included in the restricted use classification. In the Agency's view, the amount of TBT from this use is insignificant when compared to the amount that may be introduced into the environment from the use on vessel hulls. These are products of convenience to be used by owners of non-aluminum vessels for the treatment of the underwater components of their boats. The possibility of misusing these products for treatment of hulls is believed to be very slight because of their spray-on nature. Classifying these products as restricted use would be tantamount to cancellation. However, in order for these products to be exempt from the restricted use classification, they must be labeled for use *only* on aluminum outdrive and engine components. Any other use would be unlawful.

2. A few respondents felt that the proposed restrictions would adversely affect the U.S. ship repair industry by forcing shipping companies to have work done abroad.

Response: The Agency does not anticipate that the restrictions contained in this Notice will significantly alter the current situation. The substantial *ad valorem* tax currently paid by the ship operators/owners who have their vessels maintained abroad significantly exceeds the expected cost of the TBT regulation. The expected cost of the TBT regulation does not appear to be so excessive that it should cause shipping companies to have more work done abroad. Furthermore, effective antifouling paints will continue to be available for those vessels maintained domestically including government vessels and vessels traveling only in U.S. waters.

3. One respondent stated that the Navy should be allowed to use any antifouling paint which they believe will effectively prevent fouling for the maximum period of time.

Response: Prior to the initiation of the Special Review, the Navy planned to use low release rate paints in its fleetwide conversion to TBT antifoulant paints. The Navy has expressed concern over the availability of copper-free paints for use on aluminum hulls. There are currently 12 copper-free paints with estimated release rates that tentatively meet OAPCA's release rate restriction of 4.0 $\mu g/cm^2/day$.

4. Several respondents expressed concern that if commercial paints are restricted from use on hulls of vessels under 82 feet in length, boat owners might manufacture do-it-yourself paints from widely available TBT-boosters yielding free association paints with uncontrolled release rates. Congressman Walter B. Jones, Chairman of the Merchant Marine and Fisheries Committee, asked the Agency to take action against such products which

appear to be unaffected by the Special Review.

Response: The sale and use of tributyltin additives to make antifouling paints is illegal under OAPCA. OAPCA specifically prohibits the retail sale, delivery, purchase, or receipt of any substance containing organotin for the purpose of adding the substance to paint to create an antifouling paint. The only tributyltin additive products currently registered under FIFRA by EPA are registered for application to paint to be used as mildewcides. This Notice requires these labels to be amended to specifically prohibit the application of the product to paint to create antifouling paint for use on certain listed objects. (See Section VIII.B.8.)

5. If EPA's proposed restrictions go into effect, then release rates will be about one-fifth what they were prior to regulation. However, if more large vessels are treated than in the past (mainly due to the Navy's conversion of its entire fleet), TBT concentrations in harbors may equal or exceed current levels.

Response: As of 1985, use of TBT antifoulant paints for military vessels accounted for 3.2 percent of the market. The Agency estimates that if the U.S. Navy converts its entire fleet, the military's market share will increase to 15 percent. The Agency feels that the resultant increase in environmental loading, especially in ecologically sensitive shallow water sites including estuaries, would be more than offset by OAPCA's release rate restriction and elimination of use on non-aluminum vessels less than 82 feet, and the requirements of this Notice pertaining to the classification of TBT antifoulant paints as restricted use pesticides, and the proper use and disposal of TBT paints. Further, as stated above, if results of future monitoring suggest that current restrictions have not reduced concentrations to reasonable levels, the Agency may take further regulatory action to achieve lower environmental concentrations.

6. Several respondents stated that the release rate restrictions were not developed with regard to achieving any specific water quality objectives.

Response: OAPCA's release rate restriction cannot be correlated to any specific water quality standard. OAPCA's release rate restriction was designed to reduce one source of environmental loading: TBT leaching from painted surfaces. Congress chose this as an interim way of regulating TBT release. It did not choose other means such as restricting the number of boats treated or the number of paints used.

7. The Agency's predictions of the reductions in environmental loading of TBT that will result from the proposed regulatory decision are flawed.

Response: The Agency's estimate that an approximately five fold reduction in release rate from 20 to 4 $\mu g/cm^2/day$ (the level now mandated by OAPCA) was based on estimated release rates for all TBT antifouling paint products registered when the Special Review was initiated and not on weighted averages of the volume of paint sold. On a weighted average, it is estimated that the pre-Special Review release rate was approximately 10 $\mu g/cm^2/day$. Under OAPCA's release rate restriction and assuming the same percentage of distribution as when the Special Review was initiated, the new weighted average release rate would be approximately 2 $\mu g/cm^2/day$ (also a five fold reduction).

The Agency also believes that the market will change due to OAPCA's vessel length restriction of 82 feet. Because paint registrants may switch from marketing their products from small vessel owners to large vessel owners, the Agency did not attempt to estimate the weighted average release rate in the Technical Support Document. However, the Agency does have data to indicate that approximately 40 percent of the TBT antifouling paint has been used on non-aluminum hulled commercial and recreational vessels that are shorter than OAPCA's size restriction. Therefore, based on those data, once the effect of OAPCA's restrictions is felt, TBT loading into the aquatic environment should be reduced by at least 40 percent. In addition to the elimination of use on vessels under 82 feet in length, the remaining use will be with paints that have a lower release rate (that is certified under OAPCA as having a release rate of 4.0 $\mu g/cm^2/day$ or less).

8. Several respondents expressed concern that there would not be a sufficient number of copper-free tributyltin antifouling paints with acceptable release rates available for use on aluminum hulled vessels. One respondent recommended that a maximum release rate of 10 $\mu g/cm^2/day$ for aluminum hulls should be established for an 18 month period following enactment of the regulations to allow for the reformulation of copper-free antifouling paints. Final release rates for aluminum hulled vessels should be 5 $\mu g/cm^2/day$. Another respondent recommended that a separate release rate restriction for aluminum hulled vessels should be established at 6.0 $\mu g/cm^2/day$ to ensure that efficacious copper-free paints are available to protect Navy ships with aluminum hulls.

Response: The release rate data currently available to the Agency indicates that 12 copper-free TBT antifouling paints, suitable for use on aluminum hulls, have estimated release rates which tentatively meet OAPCA's release restriction. At least 5 of these 12 paints are intended for use on commercial or military vessels. Establishing a separate release rate restriction for copper-free TBT paints is not necessary, because it appears that in the short-term a sufficient number of copper-free TBT paints will be available under OAPCA's release rate restriction and existing stocks provisions. This partly assumes that the registrants for these paints will provide the Agency with the additional release rate data, enabling the Agency to certify these paints under OAPCA. In the long-term, new copper-free TBT paints may be registered which should provide additional market options.

9. A respondent stated that the maximum permitted release rate of tributyltin should be the lowest release rate shown to be effective as an antifoulant. He has information indicating that manufacturers can reformulate antifoulants to be effective at a release rate of 3.0 to 3.5 $\mu g/cm^2$. Another respondent states that 5 $\mu g/cm^2/day$ was the lowest effective rate.

Response: Neither respondent included supporting efficacy data with their comment. The Agency does not have data to suggest the lowest effective release rate; however, it plans to require registrants to submit such data. Until these data are available, the Agency believes that it, in conjunction with OAPCA's requirements, is taking regulatory action that should significantly reduce environmental loading of TBT and thereby lessen the possibility of effects occurring to non-target aquatic organisms.

VI. Risk/Benefit Analysis

FIFRA requires EPA to weigh the risks against the benefits of the use of pesticides to determine whether continued registration would cause unreasonable adverse effects on man and the environment. The Agency has determined that with current label restrictions and formulation of products, the risks posed to nontarget organisms from the use of TBT antifouling paints outweigh the benefits. Detailed discussion of the risk and benefit components of this action (including consideration of possible alternative regulatory options) appears in the

previous Units of this Notice and in the Technical Support Document.

TBT has been shown to be highly toxic to aquatic organisms at or near 0.02 ppb. In particular, TBT has been shown to be persistent in the environment and to bioaccumulate in animal and plant tissue. potential TBT exposure to nontarget organisms is high in areas of boating and shipping activity and also may be high in sensitive ecologically productive areas because of movement of TBT residues via currents and tides. TBT binding to sediments and particulate suggests the potential for TBT bioavailability among filter and deposit feeding organisms. TBT residues have been found in U.S. waters at levels comparable to the values that have caused population effects in Europe and and to the values that have been shown to cause effects to nontarget organisms during laboratory experiments. Recent reports in the United States link TBT exposure to adversely affected oyster beds in Coos Bay, Oregon. The Agency believes that there is adequate information available to support the set of regulatory actions required herein, which are designed to reduce environmental loading of TBT and thereby lessen the possibility of effects occurring to populations of non-target aquatic organisms.

The total annual benefits of TBT antifoulant use are estimated to be $179 million compared with using the next best alternative, either copper ablative or copper conventional paints depending upon what the user is currently applying. However, the benefits are highest for those users taking advantage of the extended dry docking schedule offered by TBT copolymer/ablative paints. In most cases, recreational boat owners using TBT copolymer/ablative paints incur an additional cost from which they appear not to benefit compared to using less expensive copper based paints, because they generally do not take advantage of the extended dry docking schedule.

The Agency believes the risks resulting from the use of TBT antifouling paints can be reduced without losing benefits for most commercial and military users through the use of TBT antifouling paints which release less TBT into the aquatic environment, while complying with the requirements provided herein. It is believed that many recreational vessel owners will save money by use of non-TBT alternatives. While there may be costs to states for training certified applicators and costs to user groups who must become certified under restricted use and comply with certain application, disposal, and removal requirements, the Agency believes that the benefits of reducing the environmental loading of TBT outweigh the costs.

In order to reduce the concentrations of TBT in the aquatic environment, the Agency announces by this Notice that it will cancel all TBT antifouling paint registrations which:

(1) Do not comply with OAPCA's average daily release rate limit of 4.0 *ug* organotin/cm^2/day.

(2) Do not comply with OAPCA's prohibition on the use of TBT antifouling paints on all non-aluminum vessels under 82 feet (or 25 meters) in length (on deck).

(3) Are not classified as restricted use pesticides, restricting their sale to certified commercial applicators and their use to persons under the direct supervision of an on-site certified commercial applicator (except for products packaged in 16 ounce or less spray-can containers which are labeled for use only on outboard motors, propellers, and other non-hull underwater aluminum components).

(4) Do not have labeling which requires compliance with applicable OSHA regulations and with the following directions for use:

(a) During and after paint removal and/or application of new TBT paint, employ methods designed to prevent introduction of TBT paints into aquatic environments.

(b) Following removal of TBT paint and/or application of new TBT paint, all paint chips and spent abrasives, paint containers, unused paint, and any other waste products from paint removal or application must be disposed of in a sanitary landfill.

(5) Do not limit certain uses for some types of products, as specified herein.

In addition to the other measures which should reduce risk, risk reduction should result from the restricted use classification while still maintaining the benefits of TBT use. The Agency's restricted use classification for TBT antifouling paints requires that applicators or their supervisors are trained in matters such as proper TBT antifouling paint application, disposal, and removal, and the consequences of misuse of TBT antifouling paint. This training will help ensure that applicators follow appropriate requirements for application, clean-up, and disposal. If the appropriate procedures are followed, the risk from inadvertent aquatic contamination should be reduced. The restricted use classification further ensures that applicators adhere to the recordkeeping requirements regarding TBT paint application and disposal of TBT paint wastes. It also helps to ensure that applicators will adhere to OAPCA's size restriction as stated on the label.

The Agency has determined that it would take approximately nine months to develop a prototype training program for the use/disposal/and removal of TBT paints and paint wastes. Therefore, the Agency is requiring that the registrants develop and submit a prototype program within 180 days from the date of their application for conditional registration. The Agency has allowed an additional three months for Agency review of the program and an additional 6 months for the states to train and certify. After considering these time periods, the Agency is designating March 1, 1990 as the effective date for the restricted use classification.

The Agency has determined that the costs of meeting its requirements (that is, those pertaining to the incorporation of label language to: Reflect classification as restricted use and associated requirements for development of training specifications and materials; require adherence to certain work practices; and refer to pre-existing OSHA and OAPCA requirements) do not exceed the benefits of use of products which comply. Compliance with those requirements will serve to reduce environmental loading of TBT and the exposure of non-target aquatic organisms.

VII. Future Activities Regarding Tributyltin Antifoulant Paints

The Agency believes that the regulatory steps taken at this time under this Special Review and OAPCA should have a significant impact on reducing the environmental loading of TBT and the adverse effects on non-target aquatic species. However, the Agency also recognizes that there is a need to pursue further study of this environmental issue for at least two reasons. First, it is not clear that these regulatory actions will go far enough in protecting non-target aquatic species and, second OAPCA clearly establishes research requirements on environmental monitoring and alternatives to TBT antifoulant paints. As a result of future studies, the Agency may determine that additional regulatory actions are necessary in order to further reduce environmental loading and effects on non-target aquatic species. Therefore, the following areas of research are being pursued.

Over the next 2 to 4 years, TBT and TPT registrants will be conducting additional ecological effects studies in response to DCIs already issued by the

Agency. These studies include additional research on acute and chronic toxicity to freshwater, marine, and estuarine organisms and effects of TBT on aquatic food chains. These registrants will also be conducting environmental fate studies including degradation and metabolism studies, accumulation in fish, and bioconcentration in oysters. Registrants will also be generating data to characterize potential toxicity and exposure to humans. These studies include residue studies of TBT and TPT in edible fish and shellfish, and exposure studies of TBT to paint applicators, as well as acute, subchronic, and chronic mammalian toxicity studies. All of these studies have been required by Data Call-In Notices issued January 31, 1985, July 29, 1986, and August 26, 1987.

The Agency will issue an additional Data Call-In Notice by late 1988, which will require TBT registrants to conduct multiyear and multisite monitoring studies which will provide additional information on the extent, concentration, and fate of organotin residues in the aquatic environment and the impact of these organotin residues on indicator organisms *in situ*. These studies will develop data for representative dry docks, marinas, and other sensitive areas in order to provide information needed to evaluate the impact of the regulatory action contained in this Notice and of OAPCA's requirements on environmental concentrations of TBT. Also, the Agency is continuing its efforts to model Norfolk Harbor, Virginia as discussed in Unit II of this Notice. This model will examine environmental concentrations under several loading levels and attempt to estimate the impact of various regulatory approaches on TBT concentrations. This modeling information may be useful to the Agency if it needs to take additional regulatory action on TBT.

The Agency also plans to require from TBT and TPT registrants data that will enable the Agency to determine the lowest efficacious TBT and TPT release rate levels. This information may allow the Agency to better assess the impact on benefits of any future regulatory action and provide a guide for a further reduction of release rates if the Agency finds that this is necessary. Also, the Agency will be consulting with the U.S. Navy in regard to initiating joint research on chemical and nonchemical alternatives to organotin antifouling paints as required by OAPCA.

A more precise release rate methodology is desirable and may be a requirement for future action. The current ASTM/EPA method yields results with a relatively high variance. If monitoring studies indicate that additional reduction of TBT loading in the environment is necessary, then the release rate restriction may be lowered. If the present ASTM/EPA method cannot be modified to give more consistency, then a more precise method might have to be developed that could be relied on to distinguish between paints that have very similar release rates.

EPA is actively working to improve the precision of the current method. However, the laboratory research needed to investigate the sources of error in the current method will require 12 to 18 months to complete. To provide the best available methodology in the interim, the Agency in a joint effort with ASTM is making minor modifications to the method. These modifications are primarily aimed at tightening specifications and simplifying certain procedures. The purpose of such changes is to improve the precision of the release rate measurements. A revised draft ASTM/EPA release rate method is expected to be published in the Fall of 1988.

A research program to improve the release rate methodology has been initiated at EPA's Environmental Chemistry Laboratories. The objectives of this program are to: (1) Identify aspects of the methodology that significantly contribute to the variability, (2) design method modifications that increase the precision of the release rate measurements, (3) compare the relative precision obtained from individual modifications, and (4) select those modifications which will maximize the overall precision of the method.

Laboratory testing by the Agency will continue until appropriate modifications have been designed and tested. The Agency, in conjunction with ASTM, will use the results of these tests to finalize a method. Testing of the method by other laboratories (so called "round robin" testing) is anticipated before adoption as an official ASTM method. The extent to which the final method differs from the current method cannot be estimated at this time.

The Agency may issue a final determination regarding the release of organotin into the aquatic environment which would supersede the OAPCA release rate restriction if data submitted to the Agency indicates any of the following: (1) That release rates measured by the final method are substantially different from those estimated by the current method, (2) that additional restriction of TBT loading in the environment is necessary, or (3) that the current release rate restriction is not the lowest efficacious rate.

VIII. Compliance With This Notice

A. Definitions

The following terms are defined for the purposes of this Unit.

1. "Manufacturer" refers to any registrant who, as defined, sells, or distributes an antifouling paint (pesticide) product containing tributyltin.

2. "Distribute and sell" and grammatical variants refer to the distribution, sale, offering for sale, holding for sale, shipping, delivering for shipment, or receiving and (having so received) delivering or offering to deliver a pesticide product.

B. Requirements for Complying With This Notice

A manufacturer of any antifouling paint product containing tributyltin must submit an application to amend the registration of their product within 30 days of publication in the **Federal Register** or receipt of this Notice, whichever is later, to be allowed to continue to sell and distribute the product. Similarly, applicants for a registration subject to this final notice must file an amended application for registration within the applicable 30-day period to avoid denial of their application. The application must propose to amend the registration of the product to include the following terms and conditions and modifications:

1. A manufacturer must include a declarative statement that he has submitted appropriate release rate data for this product and the results demonstrate that the product has a release rate of organotin which does not exceed OAPCA's average daily release rate limit of 4.0 *u*g organotin/cm^2/day.

This release rate must be supported by a validated release rate study using the ASTM/EPA release rate method. Within 90 days of the Agency's receipt of data, the Agency will determine if the study is valid and, if so, whether the Agency can certify that the product meets OAPCA's release rate restriction.

2. A manufacturer must commit in writing to submit prototype specifications and materials for a certification and training program for the use/disposal/and removal of TBT antifouling paints and paint wastes. The actual prototype specifications and materials for the program will be required to be submitted within 180 days

from the date of application for conditional registration. Once submitted, the program will be reviewed by a committee comprised of the Agency's Office of Pesticide Programs Staff, including the Certification and Training Staff. Additionally, the Agency will ask for comments from representatives of the State FIFRA Issues Research and Evaluation Group (SFIREG). After final acceptance by EPA it will be passed on to the States for oversight and certification responsibilities. This program will facilitate the applicator's achievement of "commercial certified applicator's status" as prescribed by the certifying State Lead Agency (SLA). The certified applicator must meet, as a minimum, the certification requirements of FIFRA and all pertinent Federal regulations under 40 CFR Part 171. Applicators trained by this program will be considered eligible only for the status of certified commercial applicator of TBT products in the Federal aquatic pest control category or the state equivalent category or subcategory. The effective date of the restricted use classification is March 1, 1990. Training for this limited certification of competency shall include, as a minimum, sections on the following topics.

a. *Overview.* A general, practical overview of the principles and practices of using antifouling materials.

b. *Labels.* 1. Pesticide label and labeling comprehension.

2. The general format and terminology of pesticide labels.

3. The understanding of instructions, warning terms, symbols, and other information commonly appearing on pesticide labels.

4. The meaning of the terms "restricted use" and "general use".

5. Necessity for "use consistent with the label".

c. *Safety.* 1. Pesticide toxicity in general and potential tributyltin hazards to humans via common exposure routes.

2. Using antifouling paints as an example, common types and causes of pesticide exposures/accidents.

3. Precautions necessary to avoid application exposures to antifouling chemicals such as tributyltin.

4. Need for, and use of, protective clothing and equipment in the application and removal of TBT containing products.

5. Symptoms of pesticide poisoning in general.

6. Emergency procedures to be followed in case of excessive exposure to TBT antifoulant paint.

d. *Storage, handling, and disposal.* 1. Proper identification, storage, transportation, handling, mixing procedures and disposal methods for tributyltin containing compounds.

2. Proper disposal methods for paint chips and dusts suspected of containing tributyltin compounds.

3. Proper disposal methods for unused antifouling compounds containing TBT, associated wastes, spent sand-blasting grit, and containers.

e. *Environment.* The potential environmental consequences of the use/misuse or improper disposal of pesticides containing TBT as may be influenced by factors such as:

1. Precipitation, wind, and other climatic factors that may influence site run-off, drift, drying times, and the release of TBT-containing compounds.

2. Types of terrain/drainage, soil, and other work site conditions that contribute to application/removal/disposal site runoff or leaching.

3. Presence of fish, shellfish, invertebrate and other beneficial non-target organisms.

4. Desorption, solubility, absorbency, and/or persistence as related to the exposure of TBT to non-target species.

f. *Pests and pesticidal properties.* 1. The inhibition of specified pests and method of action must be demonstrated.

2. Common features of aquatic/marine pests and relevant life cycles.

g. *Antifouling product properties. 1.* Dilution procedures if any.

2. General understanding of pesticidal properties such as "What is a herbicide, biocide, mildewcide, (aquatic and otherwise).

3. Types of formulations.

4. Factors that influence effectiveness.

h. *Application techniques.* Methods/procedures/equipment used in applying tributyltin-containing compounds including the advantages and disadvantages of each.

1. Maintenance, cleaning, and calibration of equipment.

2. Relationship of discharge and placement of pesticide to proper use, unnecessary use, and misuse.

3. Prevention of drift, overspray, and other exposures to humans and endangered species.

i. *Laws and regulations.* 1. Applicable State, Federal, and local pesticide disposal laws and regulations.

2. Levels and requirements of supervision associated with the application of tributyltin restricted use products.

j. *Recordkeeping.* Certified commercial applicators or users of tributyltin will be required to maintain, at a minimum, for 2 years, records of kinds of the products, uses, dates, and application sites of restricted use products containing tributyltin. For purposes of this regulatory action "uses" will include the disposal site of tributyltin-containing dust, chips, or other waste. Therefore the location and dates of disposal will be a recordkeeping requirement. For purposes of this regulatory action, "application site" is determined to be not only the geographic location of the application site, but also the identification of the vessel receiving the application.

3. The following required statement added to the label:

It is unlawful to use this product on nonaluminum hulled vessels less than 82 feet (25 meters) in length (on deck) except for the outboard motor or lower drive unit of such vessel.

4. The following required statement added to the label:

Restricted Use Pesticide due to toxicity to Aquatic Organisms including shellfish: For sale only to certified commercial applicators and for use only by persons under the direct supervision of an on-site (at the work site) certified commercial applicator. These restrictions become effective on March 1, 1990.

5. The following required statements added to the label:

During and after paint removal and/or application of new TBT paint, methods must be employed which are designed to prevent release of TBT paints into the aquatic environment. Following removal of old TBT paint and/or application of new TBT paint, all paint chips and spent abrasives, paint containers, unused paint, and any other waste products from paint removal or application must be disposed of in a sanitary landfill.

6. The following required statement added to the label:

Users must comply with all applicable OSHA requirements.

7. Products that are formulated in pressurized containers of 16 ounces or less and are registered solely for use on outboard motor and/or lower drive units of vessels must meet the following terms and conditions:

a. Release rate requirements specified in Unit VIII.B.1. of this Notice.

b. The following required label statement:

For use only on outboard motor and/or lower drive units of vessels. Any other use is unlawful.

c. The label statement in Unit VIII.B.5. of this Notice.

d. The label statement in Unit VIII.B.6. of this Notice.

8. Products containing an organotin compound as an active ingredient and which are to be used as a paint additive to prevent or control mildew must have the following label prohibition:

It is unlawful to add this product to paints to create an antifoulant paint for use on hulls of vessels, outboard motors, lower drive units, crab pots, buoys, docks, fish nets or any other object or structure that contacts or may contact marine or fresh water.

Applications which conform to the terms and conditions included in this Notice of Intent to Cancel which are found by the Agency to be acceptable will be granted conditional registrations. Among other things, a condition of such registrations will be that acceptable specifications and materials for a prototype certification and training program must be submitted to the Agency within 180 days from the date of application for conditional registration.

C. Existing Stocks and Disposal Provisions

Pursuant to FIFRA section 6(a)(1), "the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration [is cancelled pursuant to this Notice] to such extent, under such conditions, and for such uses as he may specify, if he determines that such sale or use is not inconsistent with FIFRA and will not have unreasonable adverse effects on the environment." The Agency has determined that limited sale and use of certain existing stocks of tributyltin antifoulant paints is not inconsistent with FIFRA and will not cause unreasonable adverse effects on the environment.

OAPCA established an existing stocks provision for all TBT antifoulant paint products that were in existence on the date of enactment. These existing stocks provisions continued in effect for any product which did not comply with OAPCA's release rate certification requirement or vessel length restriction. The maximum deadlines established by OAPCA were December 16, 1988, for sale, delivery, purchase, and receipt and June 16, 1989, for use. EPA was given authority to provide shorter time frames. In taking its action, the Agency has built upon the requirements of OAPCA, in that OAPCA's release rate restriction and existing stocks provisions remain in effect. The Agency has deferred a final decision on the release rate issue, as discussed earlier. In a letter dated September 14, 1988, TBT registrants were notified that none of the existing TBT antifoulant paint products passed the initial OAPCA certification review and thus they remained subject to OAPCA's existing stocks provisions. In that letter the Agency concurred in the maximum OAPCA provision for sale and use of existing stocks. Only after satisfying the requirements for certification, would these products no longer be subject to OAPCA's existing stocks deadlines. The Agency has determined that these same existing stocks dates should apply to any product which does not meet the additional requirements of this Notice. Aside from allowing for a smoother transition and less confusion in the channels of trade by not establishing a different set of existing stocks dates, this would be consistent with the risk reduction scheme under OAPCA as well as that required by this Notice. Use of existing stocks for the maximum time allowed by OAPCA rather than for a shorter period allows users and registrants a smoother transition to products which comply with OAPCA and this Notice while not increasing the risk to non-target organisms beyond levels considered acceptable by Congress.

Accordingly, under the authority of OAPCA and FIFRA section 6(a)(1), EPA will permit the continued sale and use of existing stocks of tributyltin antifoulant paint whose registrations are cancelled pursuant to this Notice, subject to the following conditions and limitations. For purposes of this Notice, EPA defines the term "existing stocks" to mean any quantity of tributyltin antifoulant paint product in the United States on the date of cancellation pursuant to this Notice of Intent to Cancel or through voluntary cancellation that has been formulated, packaged, and labeled for use and is being held for shipment or release, or has been shipped or released into commerce.

EPA will allow the sale and distribution of existing stocks of TBT antifouling paint products until December 16, 1988. EPA will also allow use of those existing stocks until June 16, 1989. EPA requires registrants to relabel with stickers, existing stocks in their possession or control, to indicate the time limitations on distribution, sale and use. These stickers must state the following:

Any sale, delivery, purchase, or receipt after December 16, 1988 is unlawful. Any use after June 16, 1989 is unlawful.

In addition, EPA is also requiring registrants to contact immediately commercial distributors of TBT antifouling paint products to inform them of the time limitations on distribution, sale, and use, and to provide supplemental sticker labels reflecting the time limitations for existing stocks in the possession of the commercial distributors. Upon expiration of the time limitation for sale and use of existing stocks, disposal must be arranged for by the person holding or possessing such stocks and must be in accordance with the Federal, State and local requirements. Any existing stocks provisions involved in voluntary cancellation of a TBT antifouling paint product prior to the publication of the final Notice is not affected by this provision, except that the maximum length of such existing stocks provisions cannot exceed the time allowed pursuant to OAPCA and such products must be restickered as noted above.

IX. Procedural Matters

This Notice announces EPA's intent to cancel the registrations of TBT antifouling paint products. This unit explains how current registrants may apply to amend their registrations to comply with the terms and conditions discussed in Unit VII of this Notice.

Under sections 6(b) and 3(c)(6) of FIFRA, applicants, registrants, and certain other adversely affected persons are also entitled to respond to this Notice by requesting a hearing on the actions that EPA is initiating. Unless a hearing is properly requested with regard to a particular registration or application, this action will become final by operation of law.

This unit of the Notice explains how such persons may request a hearing on EPA's final cancellation and denial Notice (and the consequences of requesting a hearing or failing to request a hearing in accordance with these procedures).

A. Procedure for Amending the Terms and Conditions of Registration to Avoid Cancellation or Denial of Application

Registrants affected by the cancellation actions set forth in this Notice may avoid cancellation by filing an application for an amended registration which contains the applicable label modifications, compliance with OAPCA release rate and size requirements, and certification and training program requirements detailed in Unit VIII.B. of this Notice. This application must be filed within 30 days of receipt of this Notice or within 30 days from the publication of this Notice, whichever occurs later. Applicants for a registration subject to this Notice must file an amended application for registration within the applicable 30-day period to avoid denial of their pending application.

Applications must be submitted to: John H. Lee, Product Manager, Registration Division (TS-767C), Office of Pesticide Programs, Environmental

Protection Agency, 401 M Street SW., Washington, DC 20460, (703–557–0485).

B. Procedures for Requesting a Hearing

To contest the cancellation action set forth in this Notice, Federal registrants or applicants may request a hearing within 30 days of receipt of this Notice, or within 30 days from publication of this Notice, whichever occurs later. Any other person adversely affected by the action described in this Notice may request a hearing within 30 days of publication of this Notice in the Federal Register.

A registrant or other adversely affected party who requests a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings under 40 CFR Part 164. These procedures require, among other things, that all requests must identify the specific pesticide product(s) for which a hearing is requested, and that all requests must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements may result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of each pesticide product(s) for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

1. *Consequences of filing a timely and effective hearing request.* If a hearing on the action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice for hearings under FIFRA section 6 (40 CFR Part 164), as modified below. The hearing will be limited to the specific uses and specific product registrations for which the hearing is requested.

In the event of a hearing, the specific use or uses of the specific registered product which is the subject of the hearing request will not be cancelled except pursuant to an order of the Administrator at the conclusion of the hearing.

2. *Consequences of failure of file in a timely and effective manner.* If a hearing concerning the registration of a specific pesticide product subject to this Notice is not requested by the end of the applicable 30-day period, registration of that product will be cancelled, unless the registrant files a request for an amended or conditional registration within the statutory period provided herein (see Unit VIII of this Notice).

If the registration of a product covered by this Notice is cancelled by operation of law, the sale and distribution of existing stocks will be governed by the provisions of Unit VIII of this Notice.

C. Separation of Functions

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of EPA in any administrative hearing arising from this Notice of Intent to Cancel: the Office of the Administrative Law Judge, the Office of the Judicial Officer, the Administrator, and the Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication on the merits of any of the issues involved in this proceeding, with the trial staff or any interested person not employed by EPA, without fully complying with the applicable regulations.

X. Public Docket

Pursuant to 40 CFR 154.15, the Agency has established a public docket (OPP–30000/49A) for the Tributyltin Special Review. This public docket includes (1) this Notice; (2) any other notices pertinent to the Tributyltin Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to the Agency in response to this Notice, and any other Notice, regarding TBT antifouling paints submitted at any time during the Special Review process by any person outside government; (4) a transcript of any public meeting held by the Agency for the purpose of gathering information on tributyltin antifouling paints; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside government pertaining to tributyltin antifouling paints; and (6) a current index of materials in the tributyltin public docket.

On a monthly basis, the Agency will distribute a compendium of indices for newly received comments and documents that have been placed in the public docket for this Special Review. This compendium will be distributed by mail to those members of the public who have specifically requested such material for this Special Review, pursuant to 40 CFR 154.15(f)(3).

XI. References

The following list of references includes all documents cited in this Notice. These documents are part of the public docket for this Special Review (OPP–30000/49B). The Agency will continue to supplement the public docket with additional information as it is received.

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(2) Waldock, M.J.; Thain, J.E. (1983) Shell thickening in *Crassostrea gigas*: Organotin antifouling or sediment induced. Mar. Poll. Bull. (14)11:411–415.

(3) Alzieu, Claude. (1986) TBT detrimental effects in oyster culture in France—evolution since antifouling paint regulation. Oceans 86 Conference Record, Volume 4, Washington, DC, September 23–25, 1986. 4:1130–1134.

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(6) Smith, D.R.; Stephenson, M.D.; Goetzel, J.; Ichikawa, G.; Martin, M. 1987. The use of transplanted juvenile oysters to monitor the toxic effects of tributyltin in California waters. Proceedings Ocean 87, International Organotin Symposium, Halifax, Nova Scotia, Canada. September 28–October 1, 1988. 4:1511–1515.

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(8) M & T Chemical Co. (June 1978b) Hydrolysis Study with TBTO. Unpublished study. EPA Accession No. 238795.

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(11) Barug, D. (1981) Microbial degradation of bis(tributyltin) oxide. Chemosphere. 10:1145–1154.

(12) Blunden, S.J.; Chapman, A.H. (1982) The environmental degradation of organotin compounds—a review. Environmental Technology Letters. 3:267–272.

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field and laboratory. J. Organomet Chem. Lds. 12:343–378.

(14) Salazar, M.H.; Salazar, S.M. (1985) Ecological evaluation of organotin-contaminated sediment. Technical Report 1050. Naval Ocean Systems Center, San Diego, CA.

(15) Chilamovitch, Y.P.; Kuhn, C. (1977) Behavioural haematological and histological studies on acute toxicity of bis(tri-nbutyltin) oxide on *Salmo gairdneri* Richardson and *Tilapia rendalli* Boulenger. J. Fish. Biol. 10:575–85.

(16) Evans, D.W.; Laughlin, R.B. (1984) Accumulation of bis(tributyltin) oxide by the mud crab, *Rhithropanoeus harrisii*. Chemosphere. 13(1):213–219.

(17) Seligman, P.F.; Grovhoug, J.G.; Richter, K.E. (1986a) Measurement of butyltins in San Diego Bay, CA. A monitoring strategy. Organotin Symposium of the Oceans 86 Conference and Exposition. Washington, DC. September 23–24. 4:1289–1296.

(18) Stephenson, M.D. 1988. Personal communication to Mike Rexrode, U.S.E.P.A., Washington, DC. July 12, 1987.

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(20) Cologer, C.P.; Prieser, H.S. (1984) Fouling and paint behavior on Naval Surface Ships after multiple underwater cleaning cycles. J.D. Costlow and R.C. Tipper. *Marine Biodeterioration: An Interdisciplinary Study*. Naval Institute Press, Annapolis, MD. pp. 213–219.

Dated: September 23, 1988.

John A. Moore,

Acting Deputy Administrator.

[FR Doc. 88–22810 Filed 10–3–88; 8:45 am]

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federal register

Tuesday
October 4, 1988

Part IV

Department of Transportation

Federal Highway Administration

49 CFR Parts 383, 390, 391, and 392
Blood Alcohol Concentration Level for Commercial Motor Vehicle Drivers; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 383, 390, 391, and 392

[FHWA Docket No. MC-128]

RIN 2125-AB-AB79

Blood Alcohol Concentration Level for Commercial Motor Vehicle Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending Parts 383, 390, 391, and 392 of the Federal Motor Carrier Safety Regulations (FMCSRs) in accordance with the Commercial Motor Vehicle Safety Act of 1986 (the Act). The revisions establish 0.04 percent as the blood alcohol concentration (BAC) level at or above which a commercial motor vehicle (CMV) operator would be disqualified from operating a CMV under Section 12008 of the Act. As used in this document, BAC means alcohol concentration expressed in grams of alcohol per 100 milliliters of blood, or in grams of alcohol per 210 liters of breath, regardless of the means of measurement employed. The rule also requires CMV operators with any measured or detected BAC to be placed out-of-service for a 24-hour period in accordance with Section 392.5 of the FMCSRs. Sections 12009 and 12011 of the Act require States to adopt similar licensing sanctions for CMV operators to avoid a withholding of Federal-aid highway funds.

The rule is based on comments received to a notice of proposed rulemaking (NPRM) published in the Federal Register on May 10, 1988 (53 FR 16656), and findings of a study by the National Academy of Sciences (NAS), 1987, Special Report No. 216, "Zero Alcohol and Other Options: Limits for Truck and Bus Drivers" (the NAS Study).

EFFECTIVE DATE: October 27, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Chief, Standards Review Division, Office of Motor Carrier Standards (202) 366-4009, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

Summary of the BAC Level Provisions of the Act

Section 12008(f) of the Act requires the Secretary of Transportation (Secretary) to establish the BAC level, not to exceed 0.10 percent, at or above which a person when operating a CMV shall be deemed to be driving while under the influence (DUI) of alcohol and subject to the licensing sanctions described in the Act in Section 12008 (discussed below). Failure to issue such a rule by October 27, 1988, will result in this level being set at 0.04 percent.

Under section 12009(a)(3) of the Act, each State must, by October 1, 1993, adopt and enforce laws consistent with the Federal requirement, and consistent with any out-of-service regulations issued by the Secretary under section 12008(d)(1) of the Act, in order to avoid having Federal-aid highway construction funds withheld.

Also under section 12009, States must adopt disqualification provisions for CMV operators described in the Act. These disqualification provisions became effective on July 1, 1987 (52 FR 20574), and are contained in Section 383.51 of the FMCSRs (49 CFR 383.51). Disqualifications under the Act apply to operators of "commercial motor vehicles" as defined in the Act and occur for offenses which were committed after July 1, 1987. Certain of these disqualifications, or licensing sanctions, would apply to CMV drivers who are "deemed to be under the influence of alcohol."

Section 12008 of the Act provides that CMV operators who are found to have committed a first violation of driving a CMV under the influence of alcohol shall be disqualified for a least 1 year. For a CMV operator carrying hazardous materials, this disqualification shall be for at least 3 years. Any CMV operator found to have committed a second such offense (at any time without regard to a time limit for the second offense) shall receive a lifetime disqualification or a disqualification for a period of not less than 10 years, as may be prescribed by the Secretary.

The requirement in the Act for the Secretary to commence a rulemaking to determine the appropriate BAC level by October 27, 1987, was fulfilled by publication of the advance notice of proposed rulemaking (ANPRM) of March 23, 1987 (52 FR 9192), to which 31 responses were received. Also as required by the Act, the FHWA contracted with the NAS to conduct a study of the appropriateness of reducing the BAC level at or above which a person, when operating a CMV, is deemed to be driving while under the influence of alcohol from 0.10 to 0.04 percent. The findings of the NAS study and comments received on the ANPRM formed the basis of the NPRM of May 10, 1988.

Comments on the NPRM

The FHWA received 78 responses to the NPRM; these are enumerated by category in Exhibit 1. In addition to considering the written docket, the FHWA sponsored two public information forums (in Washington, DC and Denver, Colorado) at which 17 persons testified on behalf of a wide range of organizations.

Exhibit 1

Respondents to the BAC NPRM by Category

National Transportation Safety Board	1
National Academy of Sciences	1
Other Federal agencies	1
State agencies representing 37 States:	
Departments of motor vehicles	28
State Police departments	11
Other State agencies	7
Total State agencies	46
Localities	4
State- and locality-related organizations	2
Trucking industry and related parties:	
Associations	6
Carriers	4
Unions	1
Total trucking-related	11
Bus industry	3
Trade associations	2
Insurance industry	3
Public interest groups	3
Individuals	1
Total respondents	78

The FHWA expects to assess whether and what types of duplication or overlap may exist between alcohol-related requirements of the Commercial Driver's License (CDL) program (i.e., Part 383) and the requirements in Parts 390, 391, and 392 of the FMCSRs. This will be part of the FHWA's continuing efforts to ensure that the CDL program is practical and effective. Any reduction or elimination of burdens on drivers, States, local jurisdictions, or motor carriers that may be realized as part of this assessment would be incorporated into future rulemaking actions.

The rest of this supplementary information section summarizes the major differences between the NPRM and this final rule, discusses the FHWA's selected approach to establishing the BAC levels and penalties as mandated in the Act, discusses the resultant enforcement

issues, and presents a section-by-section analysis of the rule.

Major Differences Between NPRM and Final Rule

In response to the comments on the NPRM, the FHWA has incorporated numerous changes and refinements in the final rule, all of which are discussed in detail further below. In brief, the FHWA has:

1. Established 0.04 percent as the BAC level at or above which a person when operating a CMV shall be deemed to be driving while under the influence of alcohol;

2. Revised the definition of "conviction" to specifically include administrative determinations;

3. Specifically stated that CDL holders, by the act of driving a CMV, have given their implied consent to such testing as is requisite to the enforcement of this rule;

4. Clarified that the 24-hour out-of-service sanction applies to all drivers having any measured or detected alcohol concentration while on duty, or operating, or in physical control of a CMV or other motor vehicle covered by Section 392.5; and

5. Delineated the minimum requirements for State compliance with the BAC-related disqualification provisions of the Act and clarified that States need not necessarily apply their other DUI sanctions at the 0.04 percent BAC level.

Selection of BAC Levels and Associated Penalties

The NPRM addressed both the substance and the form of the BAC offenses and penalties mandated by the Act.

In terms of substance, the NPRM designated 0.04 percent as the BAC level at or above which the disqualification provisions of the Act—generally, one year for the first offense and life for the second offense—would take effect. The final rule retains this 0.04 percent threshold because it garnered the implicit or explicit support of most docket respondents and because the NAS study recommended a 0.04 percent level.

With respect to the docket, the overwhelming majority of respondents in all categories supported no change in the 0.04 level, as demonstrated in Exhibit 2. Among the commenters seeking a different level, there was no agreement as to what that level should be. For example, while the NTSB urged a 0.00 percent standard, the International Association of Chiefs of Police urged the retention of 0.10 percent or existing State per se percentages, if lower, as the trigger for disqualification for one year or more.

EXHIBIT 2.—RECOMMENDED BAC LEVELS FOR DISQUALIFICATION

Respondent Category	0.00	0.04 per NPRM	0.10 or State DUI	0.05 or 0.06
NTSB	1			
NAS		1		
Other Federal agencies		1		
State agencies	4	31	8	3
Localities		3	1	
State-/locality-related		1	1	
Trucking industry and related	2	9		
Bus industry	1	2		
Trade associations		2		
Insurance industry		3		
Public interest groups		3		
Individuals		1		

In the absence of any consensus for change from the proposed 0.04 percent level, the FHWA continues to agree with the scientific findings of the NAS study. Briefly, the NAS committee concluded that any BAC level above zero, most commercial drivers would experience a degradation in skill that would increase the risk of crash involvement. The majority (three-fourths) of the committee recommended that penalties required by the Act be applied to violations of 0.04 percent or higher BAC. (The report may be purchased from the Transportation Research Board, 2101 Constitution Avenue, NW., Washington, DC 20418, for a $20.00 fee. A copy of the report is available for examination in the docket.)

Thus, the FHWA has retained 0.04 percent as the BAC level at or above which CMV operators will be subject to the disqualification provisions of the Act. Furthermore, in light of the NAS recommendations and the Act, the final rule retains the 24-hour out-of-service sanction to be applied to drivers who have any measured BAC or any detected presence of alcohol.

The form of the proposed rule elicited significant comment. Setting up a three-tiered structure of alcohol-related offenses and penalties for CMV operators, the NPRM—

1. Defined "driving under the influence" (DUI) for CMV operators at 0.10 percent BAC or the State DUI level, whichever is lower. At this level, State criminal and/or administrative penalties, the disqualifications specified in the Act, and the 24-hour out-of-service would all apply. (The purpose of this proposed definition was to formally satisfy the requirements of the Act without conflicting with existing State DUI statutes.)

2. Expanded the list of offenses under Part 383 to include "driving a commercial motor vehicle with an alcohol concentration of 0.04 percent or more." At this level, the disqualifications of the Act and the 24-hour out-of-service sanction would both apply. (This provision was intended to meet the substantive thrust of the Act, which was to provide for disqualification at a BAC level consonant with the Act's goal of improved highway safety.)

3. Modified Section 392.5 of the FMCSRs to apply the 24-hour out-of-service sanctions to CMV operators having any positive alcohol concentration. (This was in consideration of the NAS study majority recommendations, and in keeping with sections 12009(a)(21) and 12006(d)(1) of the Act and the FHWA's existing authority regarding Section 392.5.)

In commenting on the three-tiered structure of the NPRM, the International Brotherhood of Teamsters (IBT) asserted that "the DOT has exceeded Congress' grant of authority by creating a disqualifying offense not found in the statute"—that is, number 2 above. According to the IBT, the Act only gave the Secretary the authority to determine "the blood alcohol concentration level at or above which a person when operating a commercial motor vehicle shall be deemed to be driving under the influence of alcohol" and subject to the penalties included in the Act.

Although the FHWA believes that the "three-tiered" structure included in the NPRM would fully accord with the substantive requirements of the Act, the FHWA has altered the form of the final rule to accommodate objections such as those raised by the IBT. Under this revised, two-tiered structure, the FHWA has—

1. Established 0.04 percent as the level at or above which a person when operating a commercial motor vehicle shall be deemed to be driving under the influence of alcohol and subject to the disqualification provisions of the Act; and

2. Continued to specify that drivers having any positive alcohol concentration will be subject to the 24-hour out-of-service sanctions.

To elicit a broad range of opinion and to assist the FHWA in the long-term planning of its regulatory agenda, the NPRM raised three specific questions related to the proposed BAC levels and associated penalties.

First, the NPRM asked whether additional penalties (i.e., over and above

the 24-hour out-of-service) would be appropriate for second offenses below 0.04 percent BAC. The respondent State agencies expressed a 2-to-1 preference against the imposition of such an ascending scale of sanctions, largely because of the associated record-keeping and administrative problems. On the other hand, the International Association of Chiefs of Police, the National Transportation Safety Board, and five other non-State respondents favored the idea. Since the Act provides no explicit authority for penalties other than 24 hours out-of-service for violations of section 392.5, and since the State agencies generally opposed the concept, the FHWA has not added such ascending penalties to this regulation and does not currently intend to seek additional authority to impose them.

Second, the NPRM asked whether there were any practical alternatives to the repeal or amendment, with respect to CMV operators, of State laws presuming that a person with a BAC of less than 0.05 percent is not under the influence of alcohol. Nine States asserted that no such alternative exists; four States stated that no conflict would exist as long as the CMV offense is treated administratively at levels below 0.05 percent. The final rule, as discussed further below under "enforcement," allows the States to treat violations of the disqualifying BAC level by means of administrative or criminal proceedings, or both.

Third, the NPRM asked whether CMV drivers having a BAC between 0.04 percent and 0.10 percent (or the State DUI level, if lower) should receive shorter-term disqualifications than those specified in the Act for violations of the disqualifying BAC level. Of the 46 respondent State agencies, 13 suggested such a change. However, the restructuring of offenses and penalties in this final rule into a "two-tiered approach" obviates any such possibility.

Enforcement Issues

Enforcement of this regulation will be primarily a State responsibility. However, the docket revealed that 20 of the respondent State agencies (representing 18 of the 37 respondent States) foresaw enforcement difficulties with the BAC levels proposed in the NPRM.

In essence, the enforcement problem is as follows. (Chapter 4 of the NAS report, cited above, provides further details.) Each State, in working out its DUI policies as a synthesis of legislative, judicial, and enforcement precedents and actions, has laboriously developed a set of standard procedures with which to deal with DUI cases. In general, as a typical DUI case progresses through the successive stages of identification of a vehicle to be stopped, determination of the driver's alcohol use, testing for impairment, arrest, evidential testing, and criminal and/or administrative proceedings, an ever-higher degree of reasonable suspicion/probable cause is required. The fundamental concern of the States is that, at the relatively low levels of BAC established in this rule, driver performance behind the wheel may not be sufficiently erratic to justify stopping a given vehicle much less proceeding with driver testing procedures. Furthermore, even if the driver is already stopped consistent with proper legal procedures, such as at a roadblock or weigh station or pursuant to other legitimate enforcement actions, the lack of reasonable suspicion/probable cause (which are generally not present at the lowest BAC levels) may prohibit proceeding with driver testing procedures.

An analysis of the enforcement problem demonstrates that the States will indeed be able to enforce this rule to the FHWA's satisfaction without compromising their individual positions on legal and constitutional issues. This rule does not require, nor does FHWA intend to mandate, any change in a State's existing procedures for initially stopping vehicles and their drivers for the enforcement of DUI laws. A State will not have to institute roadblocks, random testing programs or other enforcement procedures which have been held unconstitutional in the State or which the State does not wish to implement. On the other hand, FHWA does view the institution of additional enforcement techniques as consonant with the highway safety goals of the Act, and encourages the implementation of such techniques as are legally permissible within a given State.

This rule does, however, intensify the stringency of the procedures and sanctions to be applied to those CMV operators who are stopped, whether the stop is instituted to enforce the State DUI laws or is a routine stop, such as at a weigh station. Any measured alcohol concentration or detected presence of alcohol according to permissible State procedures, will be cause for a 24-hour out-of-service order. Moreover, if an enforcement officer has reasonable suspicion/probable cause or other legal justification to require a CMV operator to submit to alcohol concentration testing as permitted by the State, levels of 0.04 percent and above will subject a driver, after due process, to disqualification under the Act and to such other State sanctions as may be appropriate. Because the final rule specifically extends implied consent to all CDL holders, a CMV operator who refuses a test required of him/her by the State will be subject to the disqualifications of the Act as well. Thus, within the limits of each State's unique compromise between law enforcement needs and the protection of individual rights, the States will be expected to intensify the stringency with which they deal with CMV operators who are identified for alcohol enforcement.

In sum, to be in compliance with the BAC regulations, a State will have to adopt and enforce legislation which—

1. Establishes 0.04 percent as the BAC level at or above which a person when operating a commercial motor vehicle shall be deemed to be driving under the influence of alcohol according to section 12009 of the Act, and enforces the corresponding disqualification sanctions of the Act by means of administrative and/or civil proceedings. Nothing in the Act, or in Part 383 as revised in this final rule, requires a State to handle the violation of the disqualifying BAC level as a criminal offense, or to necessarily apply its other DUI sanctions at the 0.04 percent BAC level. However, the States would also be expected to continue to apply their existing criminal and/or administrative DUI statutes to CMV operators found to be operating a vehicle at or above the BAC level otherwise established by State law as DUI, and to subject violators of the disqualifying BAC level to any consequent additional penalties;

2. Establishes and enforces a 24-hour out-of-service sanction against any CMV operator having any measured alcohol concentration or any detected presence of alcohol; and

3. Implements and enforces an implied consent provision for all CMV operators with respect to any testing requisite to the enforcement of the items numbered 1 and 2 above, so that refusal to submit to testing would subject a person to penalties that are no less stringent than those to which testing could lead.

A sample of legislation accomplishing the above purposes, prepared by legal consultants to AAMVA, is reproduced herein as Appendix A.

Furthermore, to be in compliance with the BAC provisions of the Act, a State will *not* have to adopt legislation or procedures which would run counter to the State's constitutional limitations or policy choices on enforcement techniques (e. g., a State would not have to implement roadblocks if such a measure has been held to be unconstitutional by that State's courts.

or if the State chooses not to use that measure). States are, however, encouraged to strengthen their testing methods and procedures.

Section-By-Section Analysis

Section 383.5 Definitions.

Alcohol concentration. "Alcohol concentration," when expressed as a percentage, is here defined to mean grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. This definition is not intended to restrict the types of bodily fluids tested by the States in order to arrive at the blood or breath alcohol level. Tests of urine or saliva, if part of a State's available procedures, would be perfectly acceptable under this regulation as long as the scientific accuracy of the test meets the State's requirements, and as long as the results are expressible in terms of alcohol concentration as defined herein.

Conviction. Seven States commented that the definition of "conviction" in the regulatory text of the NPRM needed to be revised to include an administrative finding by a State that a violation was committed. Based on Section 6–205(c) of the Uniform Vehicle Code (1987) as adopted by the Legal Services Committee of AAMVA, the revised definition specifically includes such administrative findings. According to this definition, a "conviction" will occur even if a person is referred to a remedial program as a substitute for the imposition of a penalty, fine, or other sanction.

Driving a commercial motor vhicle while under the influence of alcohol. This definition embodies § 383. 51(b)(2)(i), which is analyzed in detail further below.

Section 383.51 Disqualification of drivers.

The final rule revises the wording of the *introductory text of paragraph (b)* because the wording in the NPRM, "Disqualification for criminal offenses," implied that the violation of the disqualifying BAC level is to be treated as a criminal offense. However, nothing in the Act requires such a violation to be dealt with exclusively through criminal proceedings. Thus, the revised language, "Disqualification for driving under the influence, leaving the scene of an accident, or commission of a felony," affords a State the flexibility to handle violations of the disqualifying BAC level by whatever administrative and/or cirminal procedures it deems appropriate. A conforming change has been made in the wording of the introductory text of paragraph (b)(3) as well.

Paragraph (b)(2)(i) defines the disqualifying offense of "driving a commercial motor vehicle while under the influence of alcohol." This offense may occur in any case meeting any one or more of the following three criteria:

(A) Driving a commercial motor vehicle while the person's alcohol concentration is 0.04 percent or more. This is one of the *per se* offenses of violating the disqualifying BAC level for CMV operators.

(B) The Uniform Vehicle Code (section 11–902(a)(2)) retains the offense of driving under the influence of alcohol to cover cases where no determination of the alcoholic content of a driver's blood was performed or available for use as evidence. For the same reason, the final rule includes the behavioral determination of driving under the influence of alcohol as one of the three criteria, any one or more of which would trigger BAC-related disqualification proceedings if the person is driving a CMV.

(C) Finally, seven States, the NTSB, the NAS, AAMVA, and two other respondents commented that implied consent provisions are essential to the enforcement of the disqualifying BAC level. To be effective, a State must provide that the penalty arising from refusal to take a test that is required of a CMV driver in accordance with State procedures is no less stringent than the worst potential outcome of the test. This can be accomplished by modifying existing implied consent laws or by enacting implied consent laws which apply specifically to CMV drivers. Therefore, the third of the criteria, any one or more of which may trigger proceedings under § 383.51(b)(2)(i), is a refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of the BAC-related disqualification as defined in criteria (A) and/or (B) above.

To be in compliance with the Act, the FHWA would expect a State to ensure by statute that a CMV operator is subject to disqualification proceedings if his/her offense meets *any one* or more of the criteria outlined above. In other words, the FHWA does not intend to give States the option of selecting one or the other of the criteria for enforcement; instead, States are expected to enforce all of them.

In addition, States must ensure that the procedures and consequent penalties for CMV operators' violations of the disqualifying BAC level are in addition to any applicable procedures and penalties under State DUI laws for all drivers. For example, if a CMV operator is found to have a measured BAC level of 0.20, he/she will have violated not only the disqualifying CMV offense but also the State illegal per se statute for DUI. Likewise, if a CMV operator is convicted of "driving under the influence" as specified in State law, he/she would likewise be subject to disqualification for excessive BAC as well as to additional penalties imposed by the State on all motorists so convicted. Finally, in refusing to take the test required under the provisions of this regulation, a CMV operator will most often be violating State implied consent provisions applicable to all drivers, and will thus be subject both to the disqualifications of the Act and to general penalties.

The purpose of the new *paragraph (d)* is to clarify what the FHWA expects each State to do, at a minimum, to be in compliance with section 12009(a)(3) of the Act (49 U.S.C. app. 2708), which requires State enforcement of the alcohol concentration level established herein. The FHWA will not require States to amend their existing criminal statutes dealing with "driving under the influence." Instead, it will suffice for States to establish an administrative procedure to disqualify (by license suspension, revocation, or cancellation) CMV operators who violate any element of paragraph (b)(2)(i) of § 383.51. This administrative procedure would be in addition to any pre-existing State criminal or administrative procedures applicable to the CMV operator's specific offense.

Section 383.72 Implied consent to alcohol testing.

The final rule adds a new section to the CDL testing and licensing portion of Part 383. This new section states that, by the act of driving a CMV, a CDL holder has given his/her implied consent to alcohol testing required of him/her by a State or jurisdiction in the enforcement of the BAC-related disqualifying offense as defined in § 383.51, and of the 24-hour out-of-service provision (Section 392.5) for any positive BAC.

Section 383.131 Test procedures.

The change to paragraph (a)(1) requires the State to inform every CDL applicant of the implied consent stated in new Section 383.72, and of the resultant exposure to procedures and penalties. The purpose of this change is to assure that applicants for the CDL are fully apprised of the terms implicit in their acceptance and use of the CDL. In addition, States are encouraged to make

full disclosure in the manual (to be provided to all CDL applicants in accord with Section 383.131) of *all* the disqualification offenses and penalties for CMV operators, so that driver applicants will understand that the offenses may have more serious consequences on their CDL than on other types of licenses.

Parts 390 and 391

Part 383 applies to all CMV operators. All drivers covered by Parts 390 and 391 of the FMCSRs are also covered by Part 383, except for drivers in interstate commerce who operate vehicles that have a gross vehicle rating of greater than 10,000 pounds and less than 26,001 pounds, and that are neither placarded for hazardous materials nor designed to carry 16 occupants or more. The purpose of the revision to Part 390 is to incorporate the new definitions for alcohol concentration, conviction, and driving a commercial motor vehicle under the influence of alcohol. These definitions were included in the NPRM under Part 391 revisions. However, with the revisions to Parts 390 and 391 (53 FR 18056) published May 19, 1988 the definitions will now be contained in Part 390. The purpose of the revisions to Part 391, as contained in this final rule, is to make consistent the BAC level requirements for all drivers covered by Part 391. The penalties applicable at 0.04 percent BAC and above will continue to differ for the two groups (CDL-holders and non-CDL-holders) covered by Part 391. The revision to Part 391 also changes the term "criminal offenses" to "criminal and other offenses" to reflect the fact that violation of the 0.04 BAC standard need not be a criminal offense.

Section 392.5 Intoxicating beverages.

The revised paragraph (a)(2) forbids a CMV operator from having "any measured alcohol concentration, or any detected presence of alcohol, while on duty, or operating, or in physical control of a motor vehicle." The penalty for violation of this regulation, as mandated in Section 12008(d)(1) of the Act, is a 24-hour out-of-service order.

The new wording ("*measured * * * or detected * * **") follows the recommendations of three States and of the International Association of Chiefs of Police, which noted that "there are many times that the driver will not be available to an instrument for measuring blood alcohol." Each State will have the discretion to determine whether "detection" alone is sufficient to justify imposition of the 24-hour out-of-service penalty, or whether and by what means "measurement" will be required. States will be responsible for enacting appropriate legislation and for issuing conforming policy guidelines to enforcement officials.

The responses of five States exhibited some uncertainty over the applicability of 392.5 to CDL holders who are not in interstate commerce and who are thus not covered by the FMCSRs in Parts 390 through 397. By virtue of the Act (at Sections 12009(a)(21) and 12008(d)(1)), the FHWA believes that State application of § 392.5 *to all CDL holders* is one of the 21 requirements with which States must comply to avoid a withholding of Federal-aid highway funds. The FHWA will, therefore, expect the States to enact legislation adapting § 392.5 to apply to all CDL holders in addition to any other drivers subject to the FMCSRs.

The 24-hour out-of-service penalty for violations of § 392.5 is an explicit requirement of the Act, and is thus not subject to regulatory change. Nevertheless, nine State agencies emphasized potential enforcement difficulties with the 24-hour penalty. For example, States are concerned about what mechanism to use to implement the out-of-service requirement and how to actually keep the driver out of service for the required period. Commenters questioned what should be done with trucks pulled over on the side of the road, the cargo, and the driver, and what records they will be required to keep and transmit. Respondents pointed to problems with the transmittal of out-of-service information, and with recordkeeping for out-of-service violations.

Most of the out of service comments address the mechanics of putting a driver out of service for 24 hours. Currently, if a driver is inspected at a State-operated MCSAP inspection station the standard inspection form must be forwarded to FHWA. If the driver is put out of service this is noted on the form. In 1987 slightly over 1 million state MCSAP inspections were reported, of which 57,581 resulted in driver out-of-service violations. (Admittedly, the majority of these out-of-service sanctions were for less than 24 hours.) If an authorized official takes a driver out of service after stopping him along the road, State procedures, which are not controlled by FHWA, apply. These procedures will not be changed by this regulation.

While foreseeing some difficulties arising when a driver is put out of service at the side of the road, as opposed to an inspection station, the FHWA does not anticipate that these problems will be drastically different from those that now exist with out-of-service orders, which may already be issued under a variety of circumstances. (For instance, drivers are already placed out of service for violations of hours-of-service regulations.) States will be free to implement these orders in whatever way they deem effective. While the State may wish to utilize out-of-service tags, secure the vehicle, or if necessary tow or impound it, these decisions will be made by the States. Whether or not a citation is issued is also a State decision. Recordkeeping and record transmittal practices also do not need to differ from those currently used.

Although 46 State agencies commented on the proposed rule, only nine presented comments which suggested difficulties with this proposal. Of eleven State police agencies that commented, only three suggested difficulties with the proposal. One, New Jersey, commented that this proposal should be workable.

Regulatory Impact

The FHWA has determined that this action does not constitute a major rule under Executive Order 12291. The rule is not expected to result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. However, because of the public interest in the issue of CMV safety and alcohol use and the expected benefit in transportation safety, this rule is considered significant under the regulatory policies and procedures of the DOT. For this reason, and pursuant to Executive Order 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions.

The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. The FHWA has prepared an overall regulatory evaluation for the various motor vehicle rulemaking actions that will be issued to implement the Act. This evaluation, which addresses some of the provisions contained in the final rule issued on June 1, 1987 (52 FR 20574, FHWA Docket No. MC–125), and the testing and licensing standards issued on July 21, 1988 (53 FR 27628 FHWA Docket No. 87–18), is in the public docket and available for inspection in the Headquarters office of the FHWA, Room 4232, 400 Seventh Street, SW., Washington, DC 20590. Specific impacts associated with this NPRM were analyzed in the NAS study and are summarized below.

The NAS study examined the costs and benefits of a scenario which

involved increased enforcement at three BAC levels, 0.10, 0.04, and zero percent. In this enforcement scenario, passive sensors and/or portable breath testers were assumed to be used. Using $1 million as the value of a life, the specified minimum value for DOT regulatory purposes, the benefit to cost ratio for the 0.10 percent BAC option would be 6.6 to 1. For both the 0.04 percent and zero BAC options the benefit cost ratio was found to be 6.7 to 1.

Using the same increased enforcement strategy assumptions, but assuming that the use of passive sensors and or portable breath testers would not be legally permitted, resulted in benefit-to-cost ratio ranging from 4.1 to 1 to 4.9 to 1 for the three BAC levels studied.

As noted in the NAS report, the estimated benefits and costs are based on extrapolation from a limited and imperfect data base. Nonetheless, the benefits would have to be overestimated in excess of 650 percent, relative to cost, before any of the stated increased enforcement levels and/or lower BAC levels would not be cost-effective when the above devices are used to determine probable cause. Greatest absolute benefits were with the zero BAC option with the least being at 0.10 percent BAC.

A significant part of the motor carrier industries covered by the Act are made up of small firms, from one-person, one-truck operations of some owner-operators, to the thousands of small fleet operators throughout the country. For this reason, the benefit and cost considerations described in the NAS study and the regulatory evaluation as applicable to employers and the motor carrier industry in general, are equally applicable to the small entity component of the industry. Small entities have been represented at public meetings held to discuss the Act and have had opportunities to submit comments to the public docket established in conjunction with FHWA's ANPRM of March 23, 1987 (52 FR 9192) and the NPRM of May 10, 1988 (53 FR 16656). The FHWA is fully committed to doing all that it can to ensure that no undue burdens are placed on small entities as a result of this proposal.

Federalism Assessment

This action amends portions of the FMCSRs primarily to include driving at BAC levels of 0.04 percent or higher as a disqualifying offense for CMV operators. Section 12008(f) of the Act directs the Secretary to take this action pursuant to notice and comment rulemaking. Failure to establish a BAC level will result in the adoption of a 0.04 level by operation of law.

State laws and regulations are not preempted by this action. However, in order to avoid a withholding of Federal-aid highway funds, States are required to adopt for CMV operators the BAC level established pursuant to this rulemaking or that level which is established by Section 12008 if the agency does not set the level, as well as conforming laws and procedures necessary to enforce the new requirements.

The statutory basis for this action is expressly set forth in the Act [Section 12008(f)]. The FHWA has carefully considered the federalism implications of this action in light of the principles, criteria, and requirements of the President's Executive Order on Federalism, E.O. 12612, October 26, 1987. This action limits the policy making discretion of the States only to the extent required by the Act, and does so only to achieve the national safety goals of the Act. This action would impose only minimal additional costs and burdens on the States. The FHWA does not believe that this action would materially reduce the scope of the governmental functions discharged by the States, or other aspects of State sovereignty. Furthermore, the final rule accords significant flexibilities to the States in the implementation of the congressionally-mandated BAC standards. For example, States will be able to treat violations of the 0.04 BAC level as administrative and/or criminal proceedings. For all these reasons, the FHWA believes that this action will be consistent with the President's Executive Order on Federalism.

Appendix A—Typical example of State implementing legislation.

The following excerpts from the fifth draft of the Model Uniform Commercial Driver's License Act (prepared in July 1988 by the Model CDL Law Subcommittee of the Legal Services Committee of AAMVA) exemplify the approaches that States may wish to consider in meeting the requirements of this final rule. Adoption of this specific wording is not binding on the States. Furthermore, States are advised that AAMVA is continuing to refine its model legislation, and is expected to incorporate the results of this final rule in its subsequent editions. However, the FHWA believes that this draft contains a useful approach to the substance of this rule.

Section 12: Disqualification and cancellation

(a) *Disqualification offenses*

Any person is disqualified from driving a CMV for a period of not less than one year if convicted of a first violation of:

(1) Driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(2) Driving a commercial motor vehicle while the alcohol concentration of the person's blood [,] [or] breath [, or other bodily substance] is 0.04 or more.

* * * * *

(5) Refusal to submit to a test to determine the driver's alcohol concentration while driving a commercial motor vehicle.

If any of the above violations occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

(b) A person is disqualified for life if convicted of two or more violations of any of the offenses specified in paragraph (a), or any combination of those offenses, arising from two or more separate incidents.

* * * * *

Section 13. Commercial drivers prohibited from operating with any alcohol in system.

(a) Notwithstanding any other provision of this [Code], a person may not drive, operate, or be in physical control of a CMV while having alcohol in his or her system.

(b) A person who drives, operates, or is in physical control of a CMV while having alcohol in his or her system or who refuses to take a test to determine [his/her] alcohol content as provided by [Section 14 of this draft model legislation] must be placed Out-of-Service for 24 hours.

Section 14. Implied consent requirements for CMV drivers.

(a) A person who drives a CMV within this State is deemed to have given consent, subject to provisions of [cite State law establishing alcohol testing standards] to take a test or tests of that person's blood, breath, or urine for the purpose of determining that person's alcohol concentration, or the presence of other drugs.

(b) A test or tests may be administered at the direction of a law enforcement officer, who after stopping or detaining the CMV driver, has probable cause to believe that driver was driving a CMV while having alcohol in his/her system.

(c) A person requested to submit to a test as provided in subsection (a) above must be warned by the law enforcement officer requesting the test, that a refusal to submit to the test will result in that person being disqualified from operating a CMV under [Section 12 of this draft model legislation.]

(d) If the person refuses testing, or submits to a test which discloses an alcohol concentration of 0.04 [percent] or more, the law enforcement officer must submit a sworn report to [State Licensing Agency] certifying that the test was requested pursuant to [subsection (a) above] and that the person refused to submit to testing, or submitted to a test which disclosed an alcohol concentration of 0.04 [percent] or more.

(e) Upon receipt of the sworn report of a law enforcement officer submitted under Subsection (d), the [state licensing agency] must disqualify the driver from driving a commercial motor vehicle under [Section 12 of this draft model legislation].

[Note by the AAMVA model law subcommittee: "To facilitate the alcohol testing of CMV drivers at BACs recommended by the FHWA * * * the Committee recommends incorporation of the above implied consent provision into the

Model State CDL law. The above provision first clarifies the authority of law enforcement officers to request a CMV driver to submit to a test of their alcohol concentration at lower levels than currently allowed under State implied consent laws. The adoption of this provision would also eliminate the necessity of officers estimating a driver's specific BAC at roadside, as a condition to requesting a CMV driver taking an alcohol test. Appropriate administrative actions would then be imposed upon the test results. Since drivers face being disqualified from operating a CMV, for test results of 0.04 or greater, the Committee recommends adopting a like disqualification period for those who refuse to be tested. To insure that the sanctioning of CMV drivers complies with due process requirements, each State should integrate provisions of the Act into existing notice, hearing, and appeal procedures currently utilized for other motor vehicle administrative sanctioning actions."]

* * * * *

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

In consideration of the foregoing, the FHWA hereby amends Title 49, Code of Federal Regulations, Chapter III, Subchapter B, as set forth below:

List of Subjects in 49 CFR Parts 383, 390, 391, and 392

Highway safety driver requirements, Highways and roads, Licensing, Motor carriers—Driver qualification, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on September 29, 1988.

Robert E. Farris,

Federal Highway Administrator.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. The authority citation for Part 383 continues to read as follows:

Authority: Title XII of Pub. L. 99-570, 100 Stat. 3207-170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

2. Section 383.5 is amended by adding two definitions and revising the definition entitled "conviction," placing them in alphabetical order as follows:

§ 383.5 Definitions.

* * * * *

"Alcohol concentration" (AC) means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

* * * * *

"Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated."

* * * * *

"Driving a commercial motor vehicle while under the influence of alcohol" means committing any one or more of the following acts in a CMV: driving a CMV while the person's alcohol concentration is 0.04 percent or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of § 383.51(b)(2)(i)(A) or (B), or § 392.5(a)(2).

* * * * *

§ 383.51 [Amended]

3. In § 383.51, paragraph (b) is revised, and a new paragraph (d) is added, to read as follows:

§ 383.51 Disqualification of drivers.

* * * * *

(b) Disqualification for driving while under the influence, leaving the scene of an accident, or commission of a felony.

(1) *General rule.* A driver who is convicted of a disqualifying offense specified in paragraph (b)(2) of this section, is disqualified for the time specified in paragraph (b)(3) of this section, if the offense was committed while operating a commercial motor vehicle.

(2) *Disqualifying offenses.* The following offenses are disqualifying offenses:

(i) Driving a commercial motor vehicle while under the influence of alcohol. This shall include:

(A) Driving a commercial motor vehicle while the person's alcohol concentration is 0.04 percent or more; or

(B) Driving under the influence of alcohol, as prescribed by State law; or

(C) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of § 383.51(b)(2)(i)(A) or (B), or § 392.5(a)(2).

(ii) Driving a commercial motor vehicle while under the influence of a controlled substance as defined under Section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), including all substances listed in Schedules I through V of 21 CFR Part 1308, as they may be amended from time to time. Schedule I substances are identified in Appendix D of this subchapter and Schedules II through V are identified in Appendix E of this subchapter.

(iii) Leaving the scene of an accident involving a commercial motor vehicle;

(iv) A felony involving the use of a commercial motor vehicle, other than a felony described in paragraph (b)(2)(v) of this section; or

(v) The use of a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance when defined as any substance under Section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) including all substances listed in Schedules I through V of 21 CFR Part 1308, as they may be amended from time to time. Schedule I substances are identified in Appendix D of this subchapter and Schedules II through V are identified in Appendix E of this subchapter.

(3) *Duration of disqualification for driving while under the influence, leaving the scene of an accident, or commission of a felony.*

(i) *First offenders.* A drive is disqualified for 1 year after the date the driver is found to have committed an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, provided the vehicle was not transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1813).

(ii) *First offenders transporting hazardous materials.* A driver is disqualified for 3 years after the date the driver is found to have committed an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, if the vehicle was transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1813).

(iii) *First offenders of controlled substance felonies.* A driver is disqualified for life after the driver is found to have committed an offense described in paragraph (b)(2)(v) of this section.

(iv) *Subsequent Offenders.* A driver is disqualified for life after the date the driver is found to have committed an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, if the driver had been found to have

committed once before any offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section.

* * * * *

(d) *Substantial compliance by States.* (1) Nothing in this rule shall be construed to require a State to apply its criminal or other sanctions for driving under the influence to a person found to have operated a commercial motor vehicle with an alcohol concentration of 0.04 percent, except licensing sanctions including suspension, revocation, or cancellation.

(2) A State that enacts and enforces through licensing sanctions the disqualifications prescribed in § 383.51(b) at the 0.04 alcohol concentration level and gives full faith and credit to the disqualification of commercial motor vehicle drivers by other States shall be deemed in substantial compliance with section 12009(a)(3) of the Commercial Motor Vehicle Safety Act of 1986.

* * * * *

4. Section 383.72 is added to Subpart E, as follows:

§ 383.72 Implied consent to alcohol testing.

Any person who holds a CDL shall be deemed to have consented to such testing as is required of him/her by any State or jurisdiction in the enforcement of § 383.51(b)(2)(i) and § 392.5(a)(2). Consent is implied by driving a commercial motor vehicle.

5. Section 383.131 is amended by revising paragraph (a)(1) to read as follows:

§ 383.131 Test procedures.

(a) * * *

(1) Information on the requirements described in § 383.71, the implied consent to alcohol testing described in § 383.72, the procedures and penalties, contained in § 383.51(b) to which a CDL holder is exposed for refusal to comply with such alcohol testing, State procedures described in § 383.73, and other appropriate driver information contained in Subpart E of this part;

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

6. The authority citation for Part 390 continues to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

7. Section 390.5 is amended by adding three definitions.

§ 390.5 Definitions.

* * * * *

"Alcohol concentration" (AC) means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

"Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

"Driving a commercial motor vehicle while under the influence of alcohol" means committing any one or more of the following acts in a CMV: driving a CMV while the person's alcohol concentration is 0.04 percent or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of § 383.51(b)(2)(i)(A) or (B), or § 392.5(a)(2).

* * * * *

PART 391—QUALIFICATIONS OF DRIVERS

8. The authority citation for Part 391 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

9. In § 391.15, paragraph (c) is revised to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(c) Disqualification for criminal and other offenses.

1. *General rule.* A driver who is convicted of (or forfeits bond or collateral upon a charge of) a disqualifying offense specified in paragraph (c)(2) of this section is disqualified for the period of time specified in paragraph (c)(3) of this section, if—

(i) The offense was committed during on-duty time as defined in § 395.2(a) of this subchapter or as otherwise specified; and

(ii) The driver is employed by a motor carrier or is engaged in activities that are in furtherance of a commercial enterprise in interstate, intrastate, or foreign commerce;

(2) *Disqualifying offenses. The* following offenses are disqualifying offenses:

(i) Driving a commercial motor vehicle while under the influence of alcohol. This shall include:

(A) Driving a commercial motor vehicle while the person's alcohol concentration is 0.04 percent or more;

(B) Driving under the influence of alcohol, as prescribed by State law; or

(C) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of § 391.15(c)(2)(i)(A) or (B), or § 392.5(a)(2).

(ii) Driving a motor vehicle under the influence of a Schedule I drug or other substance identified in Appendix D to this subchapter [1], an amphetamine, a narcotic drug, a formulation of an amphetamine or a derivative of a narcotic drug;

(iii) Transportation, possession, or unlawful use of a Schedule I drug or other substance identified in Appendix D of this subchapter [1], amphetamines, narcotic drugs, formulations of an amphetamine, or derivatives of narcotic drugs while on on-duty time;

(iv) Leaving the scene of an accident which resulted in injury or death; or

(v) A felony involving the use of a motor vehicle.

(3) *Duration of disqualification*—(i) *First offenders.* A driver is disqualified for 1 year after the date of conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, the driver was not convicted of, or did not forfeit bond or collateral upon a charge of an offense that would disqualify the driver under the rules of this section. Exemption. The period of disqualification is 6 months if the conviction or forfeiture of bond or collateral soley concerned the transportation or possession of substances named in paragraph (c)(2)(iii) of this section.

(ii) *Subsequent offenders.* A driver is disqualified for 3 years after the date of his conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, he was convicted of, or forfeited bond or collateral upon a charge of, an offense that would disqualify him under the rules in this section.

PART 392—DRIVING OF MOTOR VEHICLES

10. The authority citation for Part 392 continues to read as follows:

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[1] A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Office of Motor Carrier Standards, Washington, DC 20590, or to any Regional office of Motor Carrier and Highway Safety of the Federal Highway Administration at the address given in § 390.27 of this subchapter.

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

11. In Part 392, § 392.5(a)(2) is revised to read as follows:

§ 392.5 Intoxicating beverages.

(a) * * *

(1) * * *

(2) Consume an intoxicating beverage regardless of its alcohol content, be under the influence of an intoxicating beverage, or have any measured alcohol concentration or any detected presence of alcohol, while on duty, or operating, or in physical control of a motor vehicle; or

* * * * *

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federal register

Tuesday
October 4, 1988

Part V

Department of Education

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, Income Contingent Loan, and Stafford Loan (Formerly the Guaranteed Student Loan) Programs; Notice

DEPARTMENT OF EDUCATION

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, Income Contingent Loan, and Stafford Loan (Formerly the Guaranteed Student Loan) Programs

AGENCY: Department of Education.

ACTION: Notice of procedures for certification of need analysis servicers' systems and notice of closing dates for requesting and returning agreements and transmittal of information.

SUMMARY: The Secretary of Education is informing individuals and organizations that operate need analysis systems (need analysis servicers) of the procedures the Secretary will use to certify need analysis systems.

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry or Richard P. Coppage, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue, SW., Room 4018, ROB–3, Washington, DC 20202–5446, Telephone (202) 732–4490. For information regarding the specification package contact: Jim Coyle, Telephone (202) 732–5579.

SUPPLEMENTARY INFORMATION:

Program Information

The Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant (known collectively as the campus-based programs) and the Stafford Loan programs are "need-based" student financial aid programs. In order to award or approve financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by subtracting from the student's educational cost his or her expected family contribution, i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents may reasonably be expected to contribute toward his or her educational costs.

Institutions participating in the Income Contingent Loan (ICL) program must make ICLs reasonably available first to all eligible students who demonstrate financial need.

Part F of Title IV of the Higher Education Act of 1965, as amended (HEA) provides detailed formulas for determining a student's expected family contribution for the campus-based, ICL and Stafford Loan programs. The statutory formulas specify the criteria, data elements and tables for schedules of expected family contributions for these programs.

As authorized by the HEA and as a service to institutions, the Secretary will certify that an expected family contribution produced by an individual's or organization's system is consistent with the calculation prescribed by Part F of Title IV of the HEA. If an institution uses a certified need analysis system in the calculation of an expected family contribution for the 1989–90 award year under the campus-based, ICL and Stafford Loan programs, the institution can be assured that the expected family contribution produced by the system will accurately reflect the expected family contribution described in Title IV, Part F, of the HEA. A need analysis servicer may also agree to incorporate Department of Education (ED) edits, specifications and/or selection criteria for verification as described in § 668.54 of the Student Assistance General Provisions regulations. Need analysis servicers must follow the procedures set forth below to have their systems certified by the Secretary. The Secretary will provide educational institutions with a list of certified systems in May 1989.

Certification Procedural Requirements

In order to have its system certified by the Secretary, a need analysis servicer must enter into an agreement with the Secretary and follow the procedural steps below:

Step 1: The need analysis servicer requests an agreement from ED by November 7, 1988. The request must be in writing and either hand-delivered or mailed to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Student Verification Branch, 400 Maryland Avenue, SW., Room 4623, Regional Office Building 3, Washington, DC 20202–5346.

Step 2: After ED receives a request, it provides an agreement package to the need analysis servicer. The agreement package includes the agreement and contains information that will enable the need analysis servicer to determine whether it wishes its system to become certified and will enable the need analysis servicer to choose a type of participation.

Step 3: A need analysis servicer selects its participation type by indicating that type on the agreement and returning its signed agreement to ED by December 7, 1988.

Agreements delivered by mail must be addressed to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Student Verification Branch, 400 Maryland Avenue, SW., (Room 4623, Regional Office Building 3), Washington, DC 20202–5346.

A need analysis servicer must show proof of mailing the agreement. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If agreements are forwarded using the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. A need analysis servicer should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, confirmation should be obtained from the local post office. A need analysis servicer is encouraged to use certified or, at least, first-class mail.

Agreements that are hand-delivered must be taken to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Student Verification Branch, 7th & D Streets, SW., (Room 4623, Regional Office Building 3), Washington, DC 20202–5346.

Hand-delivered agreements will be accepted between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time),

except Saturdays, Sundays and Federal holidays. Agreements delivered by hand will not be accepted after 4:30 p.m. on the closing date.

Step 4: Following submission of the signed agreement to ED, ED provides the need analysis servicer with the appropriate software development package based on the participation type selected.

Step 5: Test cases and additional information pertaining to the submission of the processed test cases will be transmitted by ED to need analysis servicers at a date agreed upon between ED and the need analysis servicer. The complexity and number of the test cases depend on the participation type the need analysis servicer has selected. (A test case is a discrete set of hypothetical applicant data which is used to test the accuracy and adequacy of a computer function and the need analysis servicer's implementation of Part F of Title IV, of the HEA. A single test case may test one or more specific input, process, or output functions. An aggregate of test cases may test a particular computer process, computer run, process cycle, subsystem, or total system process.)

Each set of test cases is designed to provide evidence that will indicate the need analysis servicer's ability to perform accurately operational functions at the participation type selected. ED will evaluate two test case submissions at no charge; a fee of $3,000 will be charged for any additional test case submissions. A need analysis servicer will be given a choice of receiving its test cases by hard copy, floppy disk, or magnetic or cartridge tape.

Note: ED expects that a servicer will thoroughly test its system prior to submitting test cases to ED for evaluation.

Step 6: A need analysis servicer processes all the test cases provided and submits to ED the generated results on hard copy, floppy disk, or magnetic or cartridge tape by March 31, 1989. The need analysis servicer must demonstrate to the satisfaction of ED that there were no system deficiencies in those test cases submitted by March 31, 1989. Any discrepancies in the test case results must be resolved to the satisfaction of ED by April 14, 1989 in order for the need analysis servicer's system to be certified and included in the list of certified systems that the Secretary will publish in May 1989.

Test case results delivered by mail must be addressed to Ms. Chris Ledman Stecker, National Computer Systems, 2510 North Dodge Street, Iowa City, Iowa 52244.

A need analysis servicer must show proof of mailing the test case results. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If test case results are forwarded using the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. A need analysis servicer should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, confirmation should be obtained from the local post office. A need analysis servicer is encouraged to use certified or, at least, first-class mail.

Test Case Results Delivered by Hand

Test case results that are hand-delivered must be taken to Ms. Chris Ledman Stecker, National Computer Systems, 2510 North Dodge Street, Iowa City, Iowa 52244.

Hand-delivered test case results will be accepted between 8:00 a.m. and 4:30 p.m. daily (central time), except Saturdays, Sundays and Federal holidays. Test case results delivered by hand will not be accepted after 4:30 p.m. on the closing date.

Closing Dates

1. Deadline date to request agreement—November 7, 1988.
2. Deadline date to submit agreement to ED—December 7, 1988.
3. Deadline date to submit test case results to ED for May 1989 notice—March 31, 1989.
4. Deadline date to resolve test case results for May 1989 notice—April 14, 1989.

(Catalog of Federal Domestic Assistance No. 84.038, Perkins Loan Program (formerly National Direct Student Loan); 84.038, Income Contingent Loan Program, 84.033, College Work-Study Program; 84.007, Supplemental Educational Opportunity Grant Program; and 84.032, Stafford Loan Program (formerly Guaranteed Student Loan))

Dated: September 28, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-22837 Filed 10-3-88; 8:45 am]

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federal register

Tuesday
October 4, 1988

Part VI

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants (NESHAPS); Extension of Deadlines Under Standards for Radon-222 Emissions From Licensed Uranium Mill Tailings; Proposed Amendments to Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3436-2]

National Emission Standards for Hazardous Air Pollutants (NESHAPS); Extension of Deadlines Under Standards for Radon-222 Emissions From Licensed Uranium Mill Tailings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments to rule.

SUMMARY: This notice proposes an extension of deadlines for application and certification under 40 CFR 61.252(b)(1) and (c) and for decision by the Administrator on an application under 40 CFR 61.252(d) or (e). These extensions are needed to provide additional time for uranium milling operators to decide whether or not to build new tailings impoundments. In addition, they will give EPA more time to decide whether or not to grant extensions to mill owners. These changes postpone these decisions until after EPA has reexamined and possibly changed its present mill tailings NESHAP. This will reduce the regulatory burden on industry and allow EPA to concentrate its resources on its efforts to reconsider the radionuclide NESHAPS.

DATE: The period for public comment will end November 3, 1988. A hearing will be held, if requested by the public, during the comment period.

ADDRESSES: Comments should be sent to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The decision-making record is contained in Docket No. A 79-11, located in Room 4, South Conference Center and may be inspected between 8 a.m. and 3 p.m., Monday through Friday. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Terrence A. McLaughlin, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, DC 20460, (202) 475-9610.

SUPPLEMENTARY INFORMATION:

I. Background

On September 24, 1986, the EPA promulgated a final rule under Section 112 of the Clean Air Act regulating Radon-222 emissions from licensed uranium mill processing sites. (51 FR 34056, September 24, 1986). The rule established work practices for new tailings requiring either phased or continuous disposal.

Phased disposal is the placement of tailings into a series of lined impoundments not larger than 40 acres that meet the requirements of 40 CFR 192.32(a). The 40 CFR 192.32(a) specifies procedures to prevent the migration of wastes out of the impoundment and into groundwater. No more than two impoundments may be in operation at any one site at any one time.

Continuous disposal is a method in which, on a continuous basis, tailings are dewatered soon after generation and immediately placed in disposal areas and covered. No more than 10 acres of tailings may be uncovered at any one time. Reducing radon emissions from existing uranium mill tailings piles presents a more difficult problem than new mill tailings impoundments due to the fact that many of the existing piles were not designed to protect radon emissions. After examining many regulatory options, EPA determined that the proper course regarding these piles is to require their closure. Therefore, the rule requires that the disposal of additional tailings on existing piles must cease 6 years after the promulgation of the rule (or not later than December 31, 1992).

An owner may apply to the Administrator for an extension to continue to use an existing tailings pile after that date, and the Administrator has 9 months from the date of application to grant, approve with conditions, or deny the extension. The rule specifies an exception for existing tailings piles smaller than 20 acres, and for piles smaller than 40 acres that are lined in accordance with 40 CFR 192.32. The 40 CFR 61.252 paragraphs (b) & (c) provide that by September 1988, owners of existing tailings piles must either certify to the Administrator that they do not intend to build new impoundments or apply for approval to construct a new impoundment under 40 CFR 61.07.

In November 1986, petitions challenging EPA's standard for emissions from licensed uranium mill tailings piles were filed in the U.S. Circuit Court of Appeals for the District of Columbia Circuit by the Environmental Defense Fund (EDF) and the American Mining Congress (AMC). On July 28, 1987, the Court remanded EPA's standards for Vinyl Chloride, *Natural Resources Defense Council v. EPA*, 824 F.2d 1146 (D.C. Cir. 1987) (*en banc*) in a manner that had implications for other EPA rulemakings under section 112 of the Clean Air Act. In light of that decision, EPA concluded that the NESHAP standard for uranium mill tailings at licensed sites should be reconsidered. On April 1, 1988, EPA moved for a voluntary remand of the record. In its motion, EPA stated that it would proposed modifying the existing standards for uranium mill processing sites in the manner proposed today. The standards would otherwise remain in effect pending completion of EPA's rulemaking proceeding. On August 3, 1988, the Court granted EPA's motion.

The proposed changes would affect § 61.252 (b)(1), (c), and (e). Section 61.252(b)(1) describes the procedure under which owners may continue to place new tailings on existing tailings piles, while they build new tailings impoundments. The current deadline for application to the Administrator for approval under this section is September 24, 1988. Today's proposed amendments would extend this deadline to December 31, 1989.

Any applications received before this date will be held for consideration after EPA completes its reconsideration of the standards. Likewise, EPA proposes to extend the certification deadline specified in § 61.252(c) until December 31, 1989, for owners who do not intend to construct new impoundments. Furthermore, EPA proposes that the 9-month time period in which the Administrator must grant, approve with conditions, or deny an application for extension to continue to use an existing tailings pile under § 61.252(e) will not begin to run for any existing or future application until December 31, 1989, or the date of the application, whichever is later.

EPA believes these proposed amendments will reduce the regulatory burden on industry and allow EPA to concentrate its resources on its efforts to reconsider the radionuclide NESHAPS. These amendments will accomplish these goals without increasing radon emissions from the mill tailings piles. These amendments will reduce industry's regulatory burden, because they will not require an immediate decision on whether or not to build new mill tailing impoundments.

In addition, these amendments save time and resources for EPA since they allow deferral of any decision on an application for an extension to continue to operate existing tailing impoundments.

Miscellaneous

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The EPA

has determined that this rule is not a major rule as defined in section 1(b) of the Executive Order, because the annual effect of the rule on the economy will be less than $100 million per year. Also, it will not cause a major increase in costs or prices for any geographic region. Further, it will not result in any significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States enterprises to compete with foreign enterprises in domestic or foreign markets. Under Executive Order 12291, this rule was submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response to those comments are included in the docket.

B. Paperwork Reduction Act

The rule does not impose any reporting or recordkeeping requirements on operators of uranium mills and associated tailings piles.

C. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published.

However, section 604(b) of the Regulatory Flexibility Act provides that section 603 "shall not apply to any proposed * * * rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

The EPA believes this rule will have little or no impact on small businesses because the total costs associated with the standards will have relatively little impact on the total cost of producing uranium oxide.

For the preceding reasons, I certify that this rule will not have a significant economic impact on the substantial number of small entities.

Dated: September 20, 1988.

Lee M. Thomas,

Administrator.

PART 61—[AMENDED]

It is proposed to amend Part 61 of Chapter 1 of Title 40, Subpart W of the Code of Federal Regulations as follows:

1. The authority citation for Part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

2. Section 61.252 is amended by revising paragraphs (b)(1), (c), and (e)(2) to read as follows:

§ 61.252 Standard.

* * * * *

(b) * * *

(1) As soon as practical, but no later than December 31, 1989, all owners who wish to build new tailings impoundments shall apply to the Administrator for approval to construct under § 61.07. The Administrator shall make a determination to grant or deny any application for approval in accordance with § 61.08, except that the time limitations of (a) and (d) of this section, shall not apply.

* * * * *

(c) Owners who do not intend to build a new tailings impoundment must certify to the Administrator as soon as possible, but no later than December 31, 1989, that they do not intend to build a new impoundment at the mill site. Owners who make this certification will be able to use their existing tailings piles for the deposition of new tailings or waste water associated with milling and mining activities until December 31, 1992, unless they receive an exception or extension form the Administrator in accordance with paragraph (d) or (e) of this section, in which case the owner may continue to use the existing tailings piles as permitted by the terms of the exception or extension.

* * * * *

(e) * * *

(2) The owner may apply for an extension at any time up to 1 year before the cease-use date. The Administrator will have 9 months from December 31, 1989, or the date of application, whichever is later, to grant, approve with conditions, or deny the extension. Subject to paragraph (g) of this section, no extension will be granted for longer than 5 years, and no extension pursuant to paragraph (e)(1)(i) of this section, shall be granted for any period longer than necessary for the owner to meet applicable paragraph (b) requirements.

* * * * *

[FR Doc. 88-22189 Filed 10-3-88; 8:45 am]

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federal register

Tuesday
October 4, 1988

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 157

Construction, Alteration, Activation, and Deactivation of Airports; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 157

[Docket No. 25708, Notice No. 88-15]
RIN 2120-AB74

Construction, Alteration, Activation, and Deactivation of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend Federal Aviation Regulations (FAR) Notice of Construction, Alteration, Activation, and Deactivation of Airports, in response to a recommendation of a National Airspace Review (NAR) task group and an FAA-initiated review of this regulation. The specific proposed changes are: (1) A requirement for airport operators, proponents, or sponsors to notify the FAA of any proposed traffic pattern and any proposed changes to any existing airport traffic pattern; (2) a requirement for prior notice of certain changes in the status of airport use and flight rules status; (3) the incorporation of definitions of certain types of airports; (4) clarification of the weather minimums in which airport operations may be conducted at a temporary airport without prior notice to the FAA; (5) the elimination of exceptions to reporting requirements for certain "remote" airports and heliports; (6) provision for a void date in any FAA determination; (7) a reduction in the time period within which an airport proponent must notify the FAA of completing an airport project; (8) a clarification that the scope of this regulation includes consideration of the safety of persons and property on the surface and that an FAA determination is not based on any environmental or land-use compatibility issue; and (9) the incorporation of editorial changes that would simplify and clarify the regulations. The FAA believes that the proposed changes to the regulations will enhance the safety and efficiency of the use of airspace and the safety of persons and property on the surface.

DATE: Comments must be received on or before January 3, 1989.

ADDRESSES: Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25708, 800 Independence Avenue, SW., Washington, DC 20591. The comments may be examined in the Rules Docket, Room 915, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Laser, Air Traffic Rules Branch, ATO-230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9251.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in these proposed rulemaking procedures by submitting such written data, views, or arguments as they may desire. Comments are invited that provide the factual basis supporting the views and suggestions presented relating to the environmental, energy, or economic impacts that may result from adoption of the proposals contained in this notice. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further action. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons before and after the closing date for comments. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25708." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM'S

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the regulatory docket or notice number of this NPRM and be submitted in duplicate to the address above. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular 11-2.

Background

Task Group 1-2.5B of the NAR was convened in Washington, DC, June 6, 1983, to conduct a review of uncontrolled airports. The NAR was a comprehensive review of airspace use and the procedural aspects of the air traffic control (ATC) system. In part, it was a joint FAA/aviation industry effort to improve ATC system efficiency and effectiveness. The review was intended to facilitate implementation of valid recommendations for changes to airspace use and procedures within the ATC system. The NAR included participation by representatives from the aviation industry, Department of Defense, FAA, Department of Labor, and state government aviation agencies.

Specific subjects discussed by the task group included the establishment, review, application, and improvements of airport traffic patterns, noise abatement responsibilities, and other related considerations. Two of the discussion items resulted in two recommendations concerning Part 157 and related advisory information published by the FAA concerning airspace use considerations in proposed construction, alteration, activation, and deactivation of airports. Both of these recommendations have been accepted by the FAA. Specifically those recommendations are:

NAR 1-2.5B.1—Traffic Pattern Notice

That the FAA initiate rulemaking to modify Part 157 of the Federal Aviation Regulations, to require notice of proposed traffic patterns and of changes thereto.

NAR 1-2.5B.2—Advisory Circular (AC) 70-2 Changes

That the FAA revise AC 70-2 and other documents, including paragraph 223 of the Airman's Information Manual (AIM) to explain the background of new landing area airspace studies and the necessity for requiring notice of changes to traffic patterns.

Independent of the NAR consideration of Part 157, the FAA conducted its own review of Part 157 and AC 70-2. Participating in this review were representatives from various FAA regional and national offices. This review resulted in recommendations to propose amendments to Part 157; to revise related guidance material in the Airman's Information Manual (AIM); and to amend corresponding elements of AC 70-2, Airspace Utilization Considerations in the Proposed Construction, Alteration, Activation, and Deactivation of Airports. The group conducting the review sought to clarify certain purported ambiguities in the regulations as well as to make the regulations consistent with the Federal

Aviation (FA) Act. The recommendations to amend Part 157 are set forth below. The recommendations to change AC 70–2 and the AIM will be circulated for comments in addition to, but in concert with, this rulemaking effort.

The Proposal

This proposed amendment is partially based on the NAR Task Group 1–2.5 recommendation that "FAA promulgate rulemaking to amend Part 157, to require notice of proposed traffic patterns and changes thereto." The remaining proposed amendments constitute the results of the FAA's independent review of Part 157 which was previously discussed above.

Applicability

The FAA is proposing to revise the applicability provisions which exempt actions mandated or authorized by specific legislation. The titles of the specific legislation would be replaced with general terminology that the FAA believes captures the reasoning for the current applicability provisions; i.e., notice is not required for any airport that is covered by a Federal-grant agreement between the airport sponsor/operator and the FAA. Such agreements specify that an airport layout plan, and any subsequent changes to that plan, must be submitted to the FAA for approval. The FAA views this aspect of the proposal as rule simplification and is taking this action at this time as a matter of convenience to preclude subsequent rulemaking efforts resulting from future legislative changes.

Currently, a proponent is not required to give the FAA notice of intent to operate a temporary airport if operations at that airport would be conducted under visual flight rules (VFR). Under § 91.105, operations conducted under VFR at an airport in uncontrolled airspace may be conducted with a minimum of one-mile visibility and clear of clouds. The FAA believes that an unsafe situation could be created when a temporary airport is in operation very close to another airport when operations at both airports are permitted to be conducted with visibility as low as one mile. Such a situation could result in opposite direction traffic flows. Adjacent airport operations in low-visibility conditions could create situations whereby a pilot's ability to see and avoid other aircraft is diminished. This is especially true when one or more of the affected airports are excluded from the requirement to give notice to the FAA of intent to operate a temporary airport. The FAA believes it necessary to review the aspects of any proposed temporary airport where such operations would be conducted with visibility values less than 3 miles. However, if operations at those airports were to be restricted from operating except when the visibility is 3 miles or greater, as is the case of airport operations in controlled airpace, the FAA believes that safety would not be adversely affected and, therefore, notice would not be appropriate. Accordingly, the FAA is proposing to review the applicability provision pertaining to operations at a temporary airport, to require notice if operations would be conducted with less than 3 miles visibility.

Definition of Terms

A new section would be added to include definition of terms that are unique to this Part. First, the definition of "airport" in 14 CFR Part 1, which refers to buildings on an airport is somewhat inadequate when applied to the provisions of Part 157. Specifically, the definition does not include locations where only ultralight activity is conducted; e.g., an ultralight flightpark. Accordingly, the FAA believes it is necessary to define the term "airport" for the purposes of Part 157, to include the various airport categories, especially ultralight flightparks.

The terms, "personal use airport" and "private use airport," are currently used in the text of § 157.3 but not defined. The FAA is proposing to include the definitions of these terms in the new section for definitions. Additionally, the FAA believes it is necessary to define what is meant by the phrase, "an airport that is open to the public," contained in the current § 157.3. For the purposes of Part 157, this phrase would be changed to the term "public use airport" and would mean an airport at which permission from the operator, sponsor, or owner is not necessary to conduct operations.

Projects Requiring Notice

A current provision of § 157.3 requires that an airport sponsor give the FAA notice on taxiway project proposals. The FAA believes that such notice serves the public interest when the taxiway project is on a public use airport. However, the FAA has reviewed the notice requirement associated with personal use airports and private use airports and has determined that such notification serves little, if any, useful purpose. Accordingly, the FAA believes that a requirement for such notification is an unnecessary burden on operators of personal use airports and private use airports and has proposed that it be removed from the rule.

Another provision of § 157.3 requires a sponsor of a private use airport or personal use airport to report to the FAA whenever such an airport becomes an airport open to the public; i.e., public use airport. While this provision does not require notification to the FAA when a public use airport changes to a personal use airport or private use airport, FAA guidance material in AC 70–2D has made such notification an accepted practice among airport sponsors. This enables the FAA to initiate a timely evaluation on the impact of airspace, navigational, and economic resources that have been, or are planned to be, expended on the subject airport. Accordingly, the FAA is proposing that this accepted and recommended practice be incorporated in the rule. For these same reasons, the FAA is proposing to require an airport sponsor to give the FAA advance notice when an airport sponsor changes the airport status from instrument flight rules (IFR) to VFR or from VFR to IFR.

Additionally, the FAA believes that any new or modified airport traffic pattern, which includes a departure or arrival procedure designed for noise abatement, should be studied for safety. This is to determine if such a pattern would conflict with a pattern at a nearby airport, would affect an instrument approach procedure, or would require establishment of an altitude to provide for aircraft spacing. The current regulations facilitate an FAA evaluation of airport traffic patterns only in conjunction with an airport construction, activation/deactivation, or alteration. Accordingly, the FAA is adopting NAR Recommendation 1–2.5B.1, Traffic Pattern Notice, and is proposing that an airport sponsor be required to give the FAA notice whenever an airport traffic pattern at that airport is established or modified.

Notice of Intent

Under the current regulations, when the action being reported concerns an "aeronautically remote" private use or personal use airport, notice to the FAA may be made by letter rather than by an FAA form; certain information may be omitted; and the prior notice lead time may be shortened. In part, the information obtained under these reduced reporting requirements was for record purposes only. However, the FAA is proposing to eliminate, from the regulations, any reference or requirement that information obtained through the notice process would be used for record purposes only. The FAA is taking this action because it believes

that airport proponents are entitled to FAA's knowledge and expertise concerning the airport's impact on safe and efficient use of the airspace and with respect to safety of persons and property on the ground.

For those same reasons, the FAA is also proposing to eliminate the reduced reporting requirements associated with an "aeronautically remote" personal use and private use airports. The FAA would not be able to provide airport proponents with its full potential knowledge and expertise without detailed information received through timely notice. Further, the FAA believes that complete notice information concerning "aeronautically remote" airport locations is now necessary due to growth and changes in the airspace system. For example, such airports could have an impact or be affected by aircraft operations conducted along low level routes in the military training route system. Aircraft operations in a military operations area, alert area, or restricted areas could also affect or be affected by such airport development. The same would be true for agricultural aircraft operations, power and pipeline patrol flights, energy resource related helicopter activities, and other low level flight activities.

The regulations would retain existing provisions whereby an airport sponsor may opt to advise the FAA by letter rather than by FAA Form 7480–1, and without prior notice, when the action concerns the deactivation, discontinued use, or abandonment of an airport, runway, helicopter landing or takeoff area, or associated taxiway, and when such action does not involve an instrument approach procedure. However, the FAA is proposing to require that, when the airport affected by such an action is bound by an agreement between the airport sponsor and the U.S. specifying that that airport be operated as a public use airport, prior notice would be required for such an action but the prior notice lead time would be reduced from 90 days to 30 days.

The FAA is also proposing to reduce the number of copies of FAA Form 7480–1 that an airport sponsor must submit to the FAA under the notice provisions of the regulations. The present requirement is for triplicate submission. FAA Form 7480–1 presently contains a worksheet, an original, plus three carbons. The FAA finds no need to continue the requirement for triplicate submission and will revise the form during the next print cycle to reduce it to an original and a worksheet. The carbons would be eliminated from the form. Accordingly, the regulations would be amended to require airport sponsors to submit only one FAA Form 7480–1 when such submission is required.

Finally, the FAA is proposing to delete the exception to the general prior-notice requirement for situations in which an unreasonable hardship would result from that requirement. The FAA believes that the exception language is ambiguous and allows a subjective determination by an airport sponsor on an airport action that would otherwise be subject to prior review by the FAA. However, the exception to the prior notice requirement would remain intact for emergency actions involving essential public service, public health, or public safety when prior notice would result in an unnecessary delay.

FAA Determination

The FAA is proposing several changes to this section of the regulations. First, based on experience gained with issuing airport determinations, some airport sponsors, as well as others affected by the determination, have expressed opinions that such determinations were other than advisory. Accordingly, the FAA is proposing to amend the regulations with language to clarify that the extent and effectiveness of an airport determination issued by the FAA under Part 157 is limited to that of an advisory nature.

It is clearly within the scope of the FA Act for the FAA to review airport actions with regard to the safety of persons and property on the surface. While the FAA has routinely considered the safety of persons and property on the surface during its review, the current language in the regulations is silent in regard to this aspect. Also, there have been some challenges to airport determinations that have addressed these safety considerations; therefore, the FAA believes it necessary to amend the regulations to include language that an airport determination may reflect consideration of the safety of persons and property on the surface.

While it should be understood that the provisions of Part 157 do not preempt any State or local statutes pertaining to actions related to airport facility actions covered by Part 157, there have been occasions of misunderstandings on this issue. The FAA is, therefore, proposing to amend the regulations by adding language clarifying that an airport determination does not relieve an airport sponsor from compliance with State, other Federal, or local statutes which might be related to the airport action.

The FAA's efforts associated with making an airport determination may involve the identification of potential noise problem areas; however, such efforts should not be construed to mean that an airport determination is based on environmental issues or that the FAA has conducted an environmental assessment. Neither should it be construed that it is within the FAA's authority to make a determination relative to any land use compatibility issues. Since misunderstandings have arisen in the past, the FAA believes it necessary to propose that appropriate explanatory language be added to the regulations.

The FAA is also proposing to change the determination category "no objection to the proposal if certain conditions are met" to "conditional." The FAA believes that the term "conditional," when applied to an airport determination would be more reflective of what this category of determination means; i.e., it means that the airport action that was analyzed is actually objectionable to the FAA unless certain conditions are met. Further, explanatory language would be included in the regulations that would make a "conditional" determination revert to an "objectionable" determination if the conditions set forth in the "conditional" determination are not met. In conjunction with this action, the FAA is proposing to eliminate from the regulations the examples of conditions that the FAA would include in such a determination. The existence of some examples in the regulations tends to cause misunderstandings when a "conditional" determination specifies a condition that does not have a corresponding example in the regulations. The FAA believes that examples should be included in appropriate guidance material; and, if this aspect is adopted, the FAA will include such examples in a revision to AC 70–2 which would be issued in concert with any final rule.

The FAA believes it is necessary to stipulate void dates on any determination for orderly planning of airspace resources. While specification of a determination void date has been an option available to the FAA under the current regulations, the conditions for the use of a void date are not provided. Therefore, to avoid the appearance of indiscriminate use of this option, and to facilitate efficient airspace resource planning, the FAA is proposing to replace this optional provision with language that would make it mandatory for the FAA to include a void date in each airport determination.

Finally, the FAA is proposing to make editorial-type changes in the terms used for airport determinations. The current terms are: *"no objection to the proposal," "no objection to the proposal if certain conditions are met,"* and *"objectionable, including reasons for the objections."* Respectively, these terms would be simplified to *"no objection," "conditional,"* and *"objectionable."*

Notice of Completion

Under the current regulations, an airport sponsor must notify the FAA of a completed action within 30 days of the completion. This notification may be made by letter or postcard. For some time, the FAA has provided airport sponsors a blank FAA Form 5010–5 with each airport determination. It has been the FAA's preference that the sponsor use the form when providing notice of completion. In most cases, the sponsor has included the completed form with the notification of completion. For obvious reasons, a completed form cannot be included with a notification of completion that is sent by postcard. Therefore, the FAA is proposing to eliminate the option of giving notice of completion via postcard.

The FAA is convinced that airspace-use efficiency is enhanced when timely notice of completion is received and when the received information is complete. The advantage of receiving timely and complete information is that such information can be timely relayed to concerned airspace users that may be affected by the airport action. For this reason, the FAA is proposing to reduce the amount of time currently permitted for the sponsor to notify the FAA that an action is completed, from 30 days to 5 days. For the same reasons, the FAA is also proposing to include the option of providing notice of completion by FAA Form 5010–5.

Economic Summary

This proposed amendment to Part 157 is intended to make airport reporting requirements consistent as stated in the documents, guidance materials, regulations, and manuals; and to add or delete reporting requirements as necessary to maintain safe operations while not imposing unnecessary burdens on airport operators. The results of that evaluation are summarized below.

Costs

The costs that would be imposed as a result of this rule fall into four categories. Costs which are incurred in the normal course of business are not attributed to the proposal even though they may be related. The four categories of maximum potential costs imposed as a result of implementing the proposed rule, summarized in Table 1, and discussed below, are:

1. Additional airports affected by the notice requirements;
2. Notice requirements for additional projects;
3. Modification to FAA Form 7480–1; and
4. Mandatory determination void dates and reduced time limits.

Additional Airports Affected by Notice Requirements

With the addition of ultralight flightparks within the definition of airport, and ultralight flightpark sponsor would be required to file notice to the FAA of any intent to construct, alter, activate, or deactivate that flightpark. The cost of making this modification is determined to be $65.25. The FAA has determined that an ultralight flightpark sponsor would file notification a maximum of one time in any given year. Since there are 46 ultralight flightparks, the total maximum economic impact of including ultralight flightparks within the definition of the term "airport" would be approximately $3,000 per year. As a matter of common practice, however, ultralight flightpark sponsors have been giving the FAA notice of flightpark projects; therefore, there may actually be no economic impact associated with this aspect.

Other airports that would be affected by this proposal include certain personal use airports and private use airports, and heliports for which the present reduced reporting provisions would be eliminated. Since the airport sponsor of any of these affected airports is already required to give the FAA notice concerning airport projects, there would be no economic impact. However, by the elimination of reduced reporting requirements, the sponsors of these types would be required to provide the FAA with at least a 90-day prior notice of commencement of an airport project. This is an increase in prior notice time from 30 days and may result in an operational impact.

Notice Requirements For Additional Projects

Under this proposal, airport status changes, traffic pattern changes (including departure/arrival noise abatement procedures), and flight rules status changes would have to be reported to the FAA. As discussed in the previous paragraph, the cost of filing notification is determined to be $65.25. Evaluations and discussions with operational air traffic personnel revealed that a maximum of 5 percent of the 16,079 airports, or 804 airports in the U.S. would have need of change in airport status in any year. Thus, the maximum economic impact on these airports by this aspect of the proposed regulations would be approximately $52,500 per year. Those same evaluations and discussions revealed that a maximum of 3 percent of U.S. airports, or 483 airports would have need of change in airport traffic patterns in any year. The maximum economic impact on these airports by this aspect of the regulations would be approximately $31,500 per year. Finally, changes in flight rules status would be experienced very infrequently at airports with instrument procedures, but more frequently at airports limited to operations conducted under VFR. It was revealed through evaluations and discussions with operational personnel that a maximum of 10 percent of 13,660 airports limited to operations conducted under VFR, or 1,366 airports would have need to change flight rules status in any year. The maximum economic impact on these airports with regard to this aspect of the proposed regulations would be approximately $89,000 per year. By refining the assumptions and reevaluating the economic effects of these changes, it can be shown that none of the proposed reporting requirements for airport sponsors concerning changes in airport traffic patterns, flight rules status, or airport status would create an unreasonable economic impact.

Mandatory Determination Void Dates and Reduced Time Limits

The aspect of the proposal that would require the FAA to establish a void date for each determination issued under Part 157 which would impose an operational impact. The impact is a result of the constraint that would be placed on the length of time permitted to begin the work involved with the proposed change to the airport. The aspect of the proposal that would reduce the amount of time, that an airport sponsor would have to provide the FAA with notice of completion, from 90 days to 5 days would create only a minimal burden on the airport sponsor because a notice would have to be filed regardless.

Modification to FAA Form 7480–1

Under this proposal and when submission of FAA Form 7480–1 is required, airport sponsors would only have to submit a single copy of the form, whereas, triplicate submission is presently required. The FAA would have to modify this form to reduce it from a worksheet, an original, and three carbons to simply a worksheet and an

original. This aspect of the proposal would result in benefit of reduced cost associated with printing forms. The cost savings that would be realized from this aspect is $2,604 per printing cycle. The present printing cycle is once every 5 years.

Based on the foregoing estimates, the maximum total cost resulting from the implementation of this proposed amendment is estimated to be approximately $176,000 per year. By refining the assumptions and reevaluating certain economic impacts of this proposed amendment, it can be determined that this amendment would impose no cost.

Benefits

There are various benefits associated with this proposal that would be experienced by the aviation community and by society in general. These benefits, both those that have been quantified and those which the FAA could not quantify, described in the following paragraphs, are:

1. Deletion of certain notification requirements;
2. Reduced cost of printing forms;
3. Increased clarification of reporting requirements;
4. Increased safety within the airspace system; and
5. Earlier notification and establishing void dates.

Deletion of Certain Notification Requirements

This proposal would delete the requirement for filing notification for taxiway projects on personal use airports and private use airports. It is estimated that there are 10,157 of these types of airports. The FAA expects that approximately 10 percent of these airports, or 1,016 airports would experience a savings of $65.25 each year. The total benefit associated with this aspect of the proposal would be approximately $66,300 per year.

Reduced Cost of Printing Forms

The aspect of this proposal which would reduce the required FAA Form 7480–1 submittal from triplicate to singular would result in benefit of reduced cost associated with printing the form. The cost savings result would be $2,604 per each 5-year printing cycle.

Increased Clarification of Reporting Requirements

This proposed amendment would change certain provisions of Part 157 which specify requirements for airport sponsors to give the FAA notice of certain airspace and airport projects. These provisions do not clearly state all of the requirements associated with filing notification of the intent to construct, alter, activate, or deactivate an airport. Under the proposed amendment, doubt or confusion concerning which aspects require notice would be significantly reduced. Also, notice to the FAA is intended, in part, to facilitate a comprehensive FAA review, dissemination of the notice to affected and other users of the National Airspace System (NAS), and eventually an FAA determination. Increased clarity of the regulatory language would result in reduced misunderstandings concerning notice requirements and, therefore, would allow greater efficiency in the entire process and thereby increase safety in the NAS.

Increased Safety Within The Airspace System

The aspect of this proposal that would add a requirement for an airport sponsor to give the FAA notice of changes in airport status, traffic patterns including noise abatement procedures, and flight rules status would benefit the aviation community and society by allowing for increased safety in the NAS. FAA's notification of these changes is essential to facilitate a review of impacted operational procedures and in maintaining a safe airspace system.

Additionally, the proposed elimination of the provision that allows an airport sponsor to opt to delay notification if that sponsor determines that an unreasonable hardship would result, would place more emphasis on the health/safety test as it pertains to the prior notice exclusion for emergency airport projects. This greater emphasis would assure that the proposed project would not threaten the safety of the airspace system.

The elimination of reduced reporting requirements for certain personal use airports and private use airports from the regulations would benefit society in a number of ways. First, information concerning such airports would no longer be withheld from affected airspace users by the current provision that certain information is required only for "recordkeeping" purposes. The notice of airport projects associated with certain "remote" airport locations would help to decrease the potential of conflicting aeronautical activity. Finally, this aspect of the proposal would assure that any potentially harmful project would be reported to the FAA prior to its commencement.

Earlier Notification and Establishing Void Dates

Benefits would also be realized by the mandatory establishment of determination void dates and by the reduced prior-notice time allowed an airport sponsor to notify the FAA of completion of an airport project. Mandatory void dates would help to avoid placing any unfair restrictions on the users of the navigable airspace which may have been established as a part of the favorable determination. Such dates would also facilitate orderly planning for the efficient use of the airspace. Additionally, potential constraints on subsequent Part 157 airport applications would be limited by the establishment of void dates on all determinations.

Notice of project completion, under this proposal, would have to be made at least five days after completion instead of within 30 days as permitted under the current regulations. Earlier receipt of this information would assure its timely availability to affected users of the NAS.

Cost and Benefits Comparisons

The potential costs of this proposal have been compared to the potential benefits to provide an analysis of the impact that this proposed amendment would have. The FAA has determined that the associated benefits far outweigh the expected costs of these proposed changes.

The maximum cost associated with this proposal, which includes all costs presented in Table 1, is estimated to be $176,000 per year. The sensitivity analysis presented in section 3 of the full draft regulatory evaluation (contained in the regulatory docket) discusses the possibility that the revisions to Part 157 simply clarify and add consistency to the regulations but do not impose additional economic impacts since notification of alterations is currently the accepted practice. Thus, by refining and varying the assumptions, it can be concluded that no cost would be imposed as a result of this proposed amendment.

The benefits associated with this proposal include both quantifiable benefits and those benefits that cannot be quantified. The delegation of certain reporting requirements for personal use airports and private use airports result in a cost savings to the airport operators of approximately $66,300 per year. Another quantified benefit associated with this proposal is the cost savings associated with the revision of form submittal from triplicate to singular. A savings of $2,604 per printing would be realized by the FAA.

There are also a number of nonquantifiable benefits attributable to this proposed rulemaking. These benefits include—

1. Increased clarification of reporting requirements leading to greater efficiency in the notification and review process;

2. Increased safety within the airspace system; and

3. Earlier notification and established void dates allowing for orderly planning for the efficient use of the airspace and the timely availability of information to users of the NAS.

The FAA, therefore, concludes that the benefits of this proposed amendment would far outweigh its expected costs.

For the reasons set forth in the preamble, the FAA has determined that the proposal does not involve a major proposal under Executive Order 12991. The proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979). A copy of the draft regulatory evaluation prepared for this action is contained in the regulatory docket, and a copy may be obtained by contacting the person identified under the caption: **FOR FURTHER INFORMATION CONTACT.**

Initial Regulatory Flexibility Determination

The FAA has also determined that the proposed changes will not have a significant economic impact on a substantial number of small entities. The small entities that could be potentially affected by the implementation of this proposed amendment are certain landing facilities in the U.S. This proposed amendment may impose an economic impact on ultralight flightparks, certain private use and personal use airports, heliports, as well as other landing facilities. The economic impact associated with this proposed amendment is determined to be $65.25 for each flightpark. Also, other landing facilities considered to be small according to guidelines would be affected by the increased reporting requirements for changes in airport status, traffic patterns, and flight rules status. The economic impact imposed as a result of these requirements most likely would not exceed the cost of $65.25 for any landing facility to file a notification in any one year.

Since the economic impact associated with this proposed amendment imposed on any airport would definitely not exceed the established cost threshold for airports—$6,189 per year in 1986 dollars, it is determined that there would be no significant economic impact on these small entities. Therefore, I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The proposals in this notice, if adopted, would have little or no impact on trade for both U.S. firms doing business overseas and foreign firms doing business in the U.S.

Federalism Determination

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 157

Airport, Aviation safety.

The Proposed Amendment

In consideration of the following, it is proposed to revise Part 157 of the Federal Aviation Regulations as follows:

PART 157—NOTICE OF CONSTRUCTION, ALTERATION, ACTIVATION, AND DEACTIVATION OF AIRPORTS

Sec.

Authority: 49 U.S.C. 1350, 1354(a), 1355; 72 Stat. 751; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

§ 157.1 Applicability.

This part applies to persons proposing to construct, alter, activate, or deactivate a civil or joint-use (civil/military) airport or to alter the status or use of such an airport. Requirements for persons to notify the Administrator concerning certain airport activities are prescribed in this part. This part does not apply to:

(a) An airport subject to conditions of a Federal agreement that requires an approved current airport layout plan to be on file with the Federal Aviation Administration.

(b) A temporary airport at which flight operations will be conducted under flight visibility conditions of 3 statute miles or more, and which are used or intended to be used for a period of less than 30 days with no more than 10 operations per day.

§ 157.2 Definition of terms.

For the purpose of this part:

"Airport" means any landing area, such as an airport, heliport, seaplane base, ultralight flightpark or manned balloon launching facility.

"Personal use" means restricted to the exclusive use of the owner.

"Private use" means available for use by the owner or other persons authorized by the owner.

"Public use" means available for use by the general public without a requirement for prior approval of the owner or operator.

"Traffic pattern" means the traffic flow that is prescribed for aircraft landing or taking off from an airport, including departure and arrival procedures utilized within a 5-mile radius of the airport for ingress, egress, and noise abatement.

§ 157.3 Projects requiring notice.

Each person who intends to do any of the following shall notify the Administrator in the manner prescribed in § 157.5:

(a) Construct or otherwise establish a new airport or activate an airport.

(b) Construct, realign, alter, or activate any runway or helicopter landing or takeoff area.

(c) Deactivate, discontinue using, or abandon an airport, runway, or helicopter landing or takeoff area for a period of one year or more.

(d) Construct, realign, alter, activate, deactivate, abandon, or discontinue using a taxiway associated with a runway or helicopter landing or takoff area on a public use airport.

(e) Change the status of an airport from personal use, private use, or public use to another status.

(f) Change any traffic pattern altitude or direction.

(g) Change the flight status of an airport from instrument flight rules (IFR) to visual flight rules (VFR), or from VFR to IFR.

§ 157.5 Notice of intent.

(a) Notice shall be submitted on FAA Form 7480-1, copies of which may be obtained from an FAA Airport District/Field Office or Regional Office, to one of those offices and shall be submitted at least—

(1) In the cases prescribed in paragraphs (a) through (d) of § 157.3, 90 days in advance of the day that work is to begin; or

(2) In the cases prescribed in paragraphs (e) through (g) of § 157.3, 90 days in advance of the planned implementation date.

(b) Notwithstanding paragraph (a) of this section—

(1) In an emergency involving essential public service, public health, or public safety when delay would result in an unreasonable hardship, a proponent may provide interim notice by telephone or any other expeditious means, but shall provide full notice, through the submission of FAA Form 7480–1, within 5 days thereafter.

(2) Notice concerning the deactivation, discontinued use, or abandonment of an airport, runway, helicopter landing or takeoff area, or associated taxiway may be submitted by letter. Prior notice is not required; except that a 30-day prior notice is required when an established instrument approach procedure is involved or when the affected property is subject to any agreement with the United States requiring that it be maintained and operated as a public use airport.

§ 157.7 FAA determination.

(a) The FAA conducts an aeronautical study of an airport proposal and, after consultations are held with interested persons, as appropriate, issues a determination to the proponent and advises those concerned of the FAA determination. The FAA considers matters such as the effects the proposed action would have on existing or contemplated traffic patterns of neighboring airports; the effects the proposed action would have on the existing airspace structure and projected programs of the FAA; and the effects that existing or proposed manmade objects (on file with the FAA) and natural objects within the affected area would have on the airport proposal. While determinations consider the effects of the proposed action on the safe and efficient use of airspace by aircraft and the safety of persons and property on the ground, they are of an advisory nature only. Except for an objectionable determination, each determination will contain a determination-void date to facilitate efficient planning of the use of the navigable airspace. A determination does not relieve the proponent of responsibility for compliance with any local law, ordinance or regulations, or State or other Federal regulations. Aeronautical studies and determinations will not consider environmental or land use compatibility impacts.

(b) An airport determination issued under this part will be one of the following:

(1) *No objection.*

(2) *Conditional.* A conditional determination will identify the objectionable aspects of a project or action and specify the conditions which must be met and sustained to preclude an objectionable determination.

(3) *Objectionable.* An objectionable determination will specify the FAA's reasons for issuing such a determination.

(c) *Determination void date.* All work or action for which notice is required by this subpart shall have been completed by the determination void date. Unless otherwise extended, revised, or terminated, an FAA determination becomes invalid on the day specified as the determination void date. Interested persons may, at least 15 days in advance of the determination void date, petition the FAA official who issued the determination to:

(1) Revise the determination based on new facts that change the basis on which it was made; or

(2) Extend the determination void date. Determinations will be furnished to the proponent, aviation officials of the state concerned, and, when appropriate, local political bodies and other interested persons.

§ 157.9 Notice of completion.

Within 5 working days after completion of an airport project covered by this part, a proponent shall notify the FAA Airport District Office or Regional Office by submission of FAA Form 5010–5 or by letter. A copy of FAA Form 5010–5 will be provided with the FAA determination.

Issued in Washington, DC, on September 27, 1988.

John R. Ryan,

Director, Air Traffic Operations Service.

[FR Doc. 88–22604 Filed 10–3–88; 8:45 am]

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federal register

Tuesday
October 4, 1988

Part VIII

The President

Proclamation 5875—National Day of Recognition for Mohandas K. Gandhi, 1988

Part VIII

The President

Proclamation 3274—National Day of Participation for Democracy in Canada
1966

Federal Register
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Tuesday, October 4, 1988

Presidential Documents

Title 3—

The President

Proclamation 5875 of October 1, 1988

National Day of Recognition for Mohandas K. Gandhi, 1988

By the President of the United States of America

A Proclamation

The message of Mohandas Gandhi, Indian disciple of nonviolent resistance, was that no society based on the denial of basic liberties can endure. He died 4 decades ago—but before his death and after, and across the oceans and continents, he gave enduring witness to all who seek, often in desperate and unequal contests, to secure the inherent rights that belong to every human being without exception. Today freedom and the desire for human rights and democracy are on the march everywhere, and Gandhi's example and inspiration offer us reason to observe a day of recognition for him.

The force at Gandhi's disposal was that of nonviolent persuasion. He understood the ideas of many of America's thinkers, such as Emerson and Thoreau. He demonstrated the power of those ideas and created a legacy that was to offer courage and hope to America's civil rights movement and many other Americans from that day to this.

Though today's United States differs in countless respects from the India of the 1930's and 1940's, nevertheless we continue to feel a kinship for many of the ideas Mohandas Gandhi represented, such as the reconciliation he championed in the search for freedom and justice. May our observance of this day in his honor be suffused with a like and lasting spirit.

The Congress, by Senate Joint Resolution 169, has designated October 2, 1988, as a "National Day of Recognition for Mohandas K. Gandhi" and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 2, 1988, as a National Day of Recognition for Mohandas K. Gandhi. I urge the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 600/Pub. L. 100-452

To commemorate the fiftieth anniversary of the passage of the Federal Food, Drug, and Cosmetic Act. (Sept. 29, 1988; 102 Stat. 1902; 2 pages) Price: $1.00

H.R. 4387/Pub. L. 100-453

Intelligence Authorization Act, Fiscal Year 1989. (Sept. 29, 1988; 102 Stat. 1904; 10 pages) Price: $1.00

H.J. Res. 665/Pub. L. 100-454

Authorizing the hand enrollment of appropriations bills for fiscal year 1989 and authorizing the subsequent, post-enactment preparation of printed enrollments of those bills. (Sept. 29, 1988; 102 Stat. 1914; 2 pages) Price: $1.00

S.J. Res. 329/Pub. L. 100-455

To designate October 24, through October 30, 1988, as "Drug Free America Week." (Sept. 29, 1988; 102 Stat. 1916; 2 pages) Price: $1.00

H.R. 4481/Pub. L. 100-456

National Defense Authorization Act, Fiscal Year 1989. (Sept. 29, 1988; 102 Stat. 1918; 207 pages) Price: $5.50